

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
2002 Biennial Regulatory Review – Review)	MB Docket No. 02-277
of the Commission’s Broadcast Ownership)	
Rules and Other Rules Adopted Pursuant to)	
Section 202 of the Telecommunications)	
Act of 1996)	
)	
Cross-Ownership of Broadcast Stations)	MM Docket No. 01-235
and Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations)	
in Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244

REPLY COMMENTS OF COX ENTERPRISES, INC.

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Cox Enterprises, Inc. (“Cox”), by its attorneys, hereby submits these reply comments in response to the *Notice* in the above-captioned rulemaking proceeding.¹

INTRODUCTION AND SUMMARY

Encompassed in this biennial review are several broadcast ownership rules that the D.C. Circuit Court of Appeals recently remanded due to inconsistencies in the Commission’s

¹ 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, Notice of Proposed Rulemaking, 17 FCC Rcd 18503 (2002) (“Notice”).

reasoning in related proceedings.² The court has remanded the national television ownership cap to give the Commission an opportunity to provide a reasoned explanation of its 1999 decision to depart from the agency's earlier assessment in the *1984 Order*³ that the cap could safely be eliminated. The court also has required the Commission to address the inconsistencies across its local broadcast ownership rules. The court first eliminated the cable-broadcast cross-ownership restriction because it was inconsistent with the Commission's revised duopoly rule allowing common ownership of local broadcast stations in the same market. The court subsequently remanded the revised duopoly rule because the "voices" test used by the Commission to support that rule was inconsistent with the "voices" test the Commission used when contemporaneously relaxing the one-to-a-market rule.

Pursuant to the court's directives in its remand orders, therefore, the Commission must provide a rational basis for any decision it adopts in this biennial review of its broadcast ownership rules, focusing first and foremost on providing a reasoned explanation for the perceived inconsistencies identified by the court. When the record evidence submitted in this proceeding is evaluated in light of the court's directives, it is clear that the Commission must retain the 35 percent national television ownership cap and eliminate the newspaper-broadcast cross-ownership rule.

Supporters of the 35 percent national television ownership cap have demonstrated in their opening comments that the factual predicate supporting the *1984 Order* no longer exists, and that

² *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002), *rehearing granted in part*, 293 F.3d 537 (D.C. Cir. 2002) ("Fox"); *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002) ("Sinclair").

³ *Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcasting Stations*, Report and Order, 100 F.C.C.2d 17 (1984) ("*1984 Order*").

the *Order*'s failure to properly address the government's longstanding interests in localism and diversity renders its legal analysis infirm. Cox, NAB/NASA and other commenters also have submitted a wealth of both economic analyses and supporting factual evidence to show that, in the wake of significant broadcast deregulation (including relaxation of the national cap), the networks have aggressively extended and leveraged their ownership interests over all sectors of media production and distribution to further their national program distribution agenda, to the detriment of local television viewers and cable customers. As a result, even an incremental, additional increase in network television station ownership would cause exponential harm to diversity, competition and especially localism.

In contrast, the networks have ignored the localism principle, choosing instead simply to restate their earlier arguments that the existence of other media outlets and the antitrust laws eliminates any basis for a national television ownership cap. Yet the networks already have made these arguments to the D.C. Circuit, and the court has explicitly rejected them. The court has also expressly rejected the networks' argument that the Commission's retention of the 35 percent national television ownership cap is inconsistent with its decisions to relax its local broadcast ownership rules. As the court explained, the national cap and the local ownership rules "are not closely related, analytically."⁴ The networks' preferences notwithstanding, these findings by the court cannot be blithely ignored. As Chairman Powell has aptly stated, the Commission does not have "the luxury to tell a court to get lost. The trivialization of the legal framework [set by the court] is irresponsible because it is not an option."⁵

⁴ *Fox*, 280 F.3d at 1044.

⁵ Edie Herman and Brigitte Greenberg, *Powell Still Firm on Issuing UNE Decision by Feb. 20*, COMM. DAILY, Jan. 30, 2003, at 1-2.

The D.C. Circuit also has emphasized that the Commission must maintain consistency across its various local cross-ownership rules. The record in this proceeding reveals that the Commission has no rational basis to preclude a newspaper owner from acquiring a broadcast station in the same market, while at the same time permitting a broadcast station owner to acquire another broadcast station, or a cable system owner to acquire a broadcast station or newspaper in that market. As in the case of the old duopoly rule, retention of the newspaper-broadcast rule is not “necessary in the public interest.” Indeed, as the record evidence demonstrates, eliminating the prohibition will provide affirmative public benefits by enabling strengthened local media outlets to serve their local communities. Accordingly, to comply with the court’s mandate in its remand orders, the Commission must repeal the newspaper-broadcast cross-ownership rule.

I. UNDER *FOX* AND *SINCLAIR*, THE COMMISSION MUST PROVIDE A “RATIONAL BASIS” FOR ITS MEDIA OWNERSHIP RULES AND EXPLAIN ANY INCONSISTENCIES WITH THE COMMISSION’S ANALOGOUS DECISIONS.

The *Fox* and *Sinclair* decisions held that the First Amendment and Section 202(h) of the Communications Act require the FCC to provide a “rational basis” for its broadcast ownership regulations. The D.C. Circuit rejected the argument, repeated by the networks in this proceeding, that a higher standard of review should apply.⁶ Rather than advocating wholesale elimination of all broadcast ownership restrictions, the *Fox* and *Sinclair* decisions made clear that Section 202(h) requires the Commission (a) to conduct a reasoned analysis of any changes in the market and (b) to explain its decision to retain, modify or eliminate the broadcast ownership regulation in question in light of analogous Commission proceedings. In both decisions, the

⁶ *Fox*, 280 F.3d at 1045-47; *Sinclair*, 284 F.3d at 168-169.

court specifically focused on the requirement that the Commission must provide a reasoned explanation of any inconsistencies in its approach to analogous ownership rules.⁷

The D.C. Circuit thus has emphasized the requirement for consistency across the Commission's local broadcast ownership rules. *Fox* vacated the cable-broadcast rule because the Commission had not considered changes in the market and had failed to reconcile its retention of the rule with its relaxed broadcast duopoly rule.⁸ Similarly, *Sinclair* remanded the duopoly rule because the Commission had not justified its decision to count fewer types of "voices" under that rule than under its rule governing cross-ownership of radio and television stations in the same market (the one-to-a-market rule).⁹ Pursuant to the court's directives, therefore, the Commission must ensure that its approach to the newspaper-broadcast cross-ownership restriction is consistent with its relaxation of the duopoly and one-to-a-market rules, as well as the elimination of the cable-broadcast and cable-newspaper cross-ownership prohibition.

By the same token, as the *Fox* court specifically stated, analytical consistency does not suggest that relaxation of the local ownership rules necessitates or even supports relaxation of the national television ownership cap. The networks already have complained to the court that the Commission acted arbitrarily when it relaxed some of its local ownership rules (due to the increase in media voices in local markets) but at the same time retained the 35 percent national cap. The *Fox* decision explicitly rejected this argument, observing that the two sets of regulations "are not closely related, analytically."¹⁰ The court likewise rejected the networks'

⁷ *Fox*, 280 F.3d at 1044-45, 1050-52; *Sinclair*, 284 F.3d at 162-65.

⁸ *Fox*, 280 F.3d at 1050-52.

⁹ *Sinclair*, 284 F.3d at 160, 162-65.

¹⁰ *Fox*, 280 F.3d at 1044 ("The networks argue that the Commission's decision . . . is inconsistent with recent Commission decisions relaxing the local television station ownership and the radio/television rules, as well as its decisions repealing the prime time access and the financial

argument that the Commission must apply the same or a similar approach to the national television ownership cap as it does to the national cable ownership cap.¹¹ As the court explained, the national cable cap differs from the national television cap in several critical respects. First, the government interest underlying the cable cap is limited by statute to furthering diversity in programming; by contrast, the national television cap implicates not only all aspects of diversity but also competition and localism concerns. Second, the court observed that the government must present more compelling evidence to support the cable cap than it does for the television cap, given the different First Amendment analyses applicable to each medium.¹²

The *Fox* court thus expressly rejected the networks' argument that the 35 percent national television ownership cap should be vacated in its entirety. Instead, the court stated that the Commission plainly could retain the 35 percent cap so long as it provides a reasoned explanation for its departure from the *1984 Order*:

[T]he Commission would have to state the reason(s) for which it believes its contrary views set out in the *1984 Report* were incorrect or are inapplicable in light of changed circumstances, but that is by no means inconceivable; the *Report* is, after all, now almost 20 years old.¹³

The court remanded the 35 percent cap to allow the Commission to conduct precisely this analysis.

In assessing whether the 35 percent cap remains necessary in the public interest, the Commission may not confine its decision to any one type or source of data. Rather, it must

syndication rules. . . . [B]ecause the decisions to which the networks point deal with regulations that are not closely related, analytically, to the NTSO Rule, they are not inconsistent with the Commission's decision to retain the national ownership cap.").

¹¹ *Id.* at 1041.

¹² *Id.*

¹³ *Id.* at 1048.

consider the entire rulemaking record and the full range of factual evidence before it, including economic analyses, industry statistics, descriptions of parties' real-world experiences and information collected from industry reports and trade publications. As the D.C. Circuit has explained in discussing the requirements of the Administrative Procedure Act, the "information gathered by the Commission during this [] rulemaking process, along with any information put forth by the agency itself, represent the factual basis on which the agency must necessarily proceed in making its final determination [so as to] give interested parties proper notice of the reasoning behind the agency's actions and to give meaning to the right to submit comments on the proposed rule."¹⁴ Although the Commission need not consider "comments which themselves are purely speculative and do not disclose the factual or policy basis on which they rest," it may not ignore factual materials (including anecdotal evidence) submitted by the parties.

The Commission also is entitled to draw reasonable inferences from the evidence presented, and to use its expertise and experience to make predictive judgments based on the record. A prime example of this practice is provided by the Commission's June 2002 review of the Section 628(c)(2)(D) prohibition on exclusive contracts for satellite programming between vertically integrated programming vendors and cable operators.¹⁵ Section 628(c)(5) provided

¹⁴ *Action for Children's Television v. FCC*, 564 F.2d 458, 471 (D.C. Cir. 1977) (discussing 5 U.S.C. § 553(c)); *see also Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35-36 and n.58 (D.C. Cir.), *cert. denied*, 434 U.S. 829 (1977) ("The opportunity to comment is meaningless unless the agency responds to significant points raised by the public" in a rulemaking proceeding. Accordingly, only "comments which themselves are purely speculative and do not disclose the factual or policy basis on which they rest require no response." "A response is also mandated by *Overton Park*, which requires a reviewing court to assure itself that all relevant factors have been considered by the agency.") (citations omitted).

¹⁵ 47 U.S.C. § 548(c)(2)(D); *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act*, Report and Order 17 FCC Rcd 12124 (2002) ("Program Access Order").

that the programming exclusivity prohibition would cease to be effective on October 5, 2002, unless the Commission found that the prohibition “continue[d] to be necessary to preserve and protect competition and diversity in the distribution of video programming.”¹⁶ In deciding to retain the programming exclusivity prohibition, the Commission relied heavily on predictive analysis and the arguments and anecdotal submissions of competitive multiple video programming distributors (“MVPDs”) regarding the importance of their continued access to certain “must have” vertically integrated programming.¹⁷ In particular, the Commission stated that the “most significant” evidence in the record on this issue was the fact that such programming “constitutes 35 percent of the most popularly rated satellite-delivered prime time programming and 45 percent of the most-subscribed-to programming.”¹⁸ The Commission

¹⁶ 47 U.S.C. § 548(c)(5).

¹⁷ As the *Program Access Order* acknowledged and as Commissioner Abernathy observed in her separate statement, the record evidence demonstrated that cable operators’ market share had declined while the growth of direct broadcast satellite (“DBS”) had continued to accelerate; vertical integration in the cable industry had decreased; and the amount and diversity of programming available to MVPDs had increased. See, e.g., *Program Access Order*, 17 FCC Rcd at 12138, ¶¶ 30-32; see also *id.* at 12176 (Separate Statement of Commissioner Kathleen Q. Abernathy). In response to this data, competitive MVPDs had submitted: one economic analysis of the MVPD industry that “states that the costs of foreclosure [by vertically integrated programmers] are the foregone revenue from all other MVPD outlets;” various MVPDs’ descriptions of HBO and similar premium programming as “must have” programming (the absence of which could harm an MVPD); and anecdotes about, for example, AT&T’s decision not to provide BELD Broadband access to certain terrestrially delivered programming (with no evidence of an AT&T foreclosure strategy), and low DBS penetration in Philadelphia (with no evidence of a linkage to their lack of access to Comcast SportsNet regional programming). See *id.* at 12138-39, ¶¶ 32-34 & n.107, 12146-47, ¶¶ 50, 52.

¹⁸ *Id.* at 12138, ¶ 32. By comparison, the domination of television network-owned programming in prime time television and even in MVPD programming is far greater. See, e.g., Mara Einstein, *Program Diversity and the Program Selection Process on Broadcast Network Television*, at 32 (September 2002) (“[T]he six vertically integrated network/producers create and distribute three-fourths of all prime-time [television] programming.”); Matt Kempner, *Television Realignment*, ATLANTA JOURNAL – CONSTITUTION, Nov. 12, 2002, at 1D (“Parents of the top six broadcast networks own or have stakes in 29 of the 40 most watched cable channels supported by advertising, including all but two of the top 10.”); Comments of Cox Enterprises, Inc. at Appendix B (“Cox Comments”).

stated that, because there was “little direct evidence of anticompetitive foreclosure of access . . . upon which we can rely,” it was basing its decision on the available evidence on the record, economic theory and predictive judgments regarding the affected parties’ behavior.¹⁹

Similarly, in *Sinclair*, the court found that the Commission had justified its decision to relax the television duopoly rule even in the absence of extensive empirical studies. The court explained that, “where the issues involve ‘elusive’ and ‘not easily defined’ areas such as programming diversity in broadcasting,” they will “accord[] broad leeway to the Commission’s line-drawing determinations.”²⁰ As Chairman Powell previously observed in discussing the public interest in broadcast diversity,

[N]ot all policy goals, not all important government interests, and indeed, not all compelling government interests, can be quantified or measured with precision. I do not believe the Constitution boxes out all subjective judgment in government actions.²¹

In short, in the instant proceeding, the Commission must incorporate predictive reasoning, economic analysis, and the entire factual record of trade reports, industry statistics, survey results, empirical studies and real-world experiences into its decision-making. That decision-making must evaluate changes in the market, adopt a decision in the public interest, and explain any seeming inconsistencies between related decisions. Section 202(h), as interpreted by the courts, demands nothing more – and nothing less.

¹⁹ *Program Access Order*, 17 FCC Rcd at 12135, ¶ 25. By contrast, the record in the instant proceeding contains substantial evidence documenting the adverse effects on localism, competition and diversity that raising the national television cap from 25 percent to 35 percent has had.

²⁰ *Sinclair*, 284 F.3d at 159-60 (citations omitted).

²¹ *Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, Report and Order, 14 FCC Rcd 12903, 12987 (Separate Statement of Commissioner Michael K. Powell) (“*Duopoly Order*”).

II. THE RECORD DEFINITELY SHOWS THAT THE 35 PERCENT NATIONAL TELEVISION OWNERSHIP CAP SHOULD BE RETAINED.

The record evidence supporting retention of the 35 percent national television ownership cap is more than sufficient to meet the evidentiary standards established by the courts.

A. Supporters of the Cap Have Demonstrated that the Findings of the 1984 Order Are Invalid in Today's Media Environment.

The comments of Cox and other supporters of the 35 percent cap provide reasoned analysis and extensive supporting facts to demonstrate that the findings of the *1984 Report* no longer are valid because (1) the media landscape that the Commission surveyed nearly two decades ago bears little resemblance to today's marketplace, and (2) the *1984 Order* ignored localism and misapplied the diversity principle.

First, as discussed in Cox's opening comments, the elimination of key broadcast regulations after 1984, the relaxation of the national television ownership cap in 1996, and the networks' subsequent (and rapid) acquisition of ownership interests in virtually every aspect of media production and distribution have caused a seismic change in the media landscape.²² The networks' web of ownership interests gives them both the incentive and the capability to advance their national agenda of ensuring carriage of their national programming across multiple media platforms, including local television stations. Moreover, the networks' extensive interests in the very media that were expected to compete with them severely undercut the potential for these sources to replace the cap and serve as a check on network behavior, as contemplated by the *1984 Order*.

In his January 24, 2003 appearance on C-SPAN, Chairman Powell described cable as the "single defining change" in the media landscape, exceeding the Internet in its transformation of

²² Cox Comments at 17-25; Comments of the National Association of Broadcasters and the Network Affiliated Stations Alliance at 31-39 ("NAB/NASA Comments").

the communications marketplace and its potential for introducing competing ideas and serving local needs.²³ As Cox explained in its opening comments, however, cable operators cannot take the place of regulation to discipline and spur the networks to serve the needs of local communities when these same conglomerates are extending their control over the cable platform by acquiring extensive cable programming interests and misusing their 35 percent national television footprint in retransmission consent negotiations to force cable carriage of network-owned cable programming at inflated rates.²⁴

Indeed, the substantial leverage that the networks enjoy as a result of their national television station footprint already can be used to harm cable customers in a variety of ways.²⁵ As explained in Cox's opening Comments, the networks to date have insisted that Cox carry network-owned cable programming at inflated compensation in their retransmission consent negotiations, and have bargained over retransmission consent for all of their O&Os nationwide in a single negotiation – a strategy designed to maximize their leverage over cable operators (such as Cox) who serve customers in multiple markets also served by O&Os.²⁶ Should the networks switch to a tactic of demanding inflated cash compensation for carriage of their free over-the-air

²³ Brigitte Greenberg, *Powell Complains about Congress's Biennial Review Mandate*, COMM. DAILY, Jan. 27, 2003, at 1.

²⁴ See Cox Comments at 41-47.

²⁵ See *id.*; American Cable Association Petition for Inquiry Into Retransmission Consent Practices, filed Oct. 1, 2002; American Cable Association Petition for Inquiry Into Retransmission Consent Practices, First Supplement, filed Dec. 9, 2002 ("ACA Retransmission Petition First Supplement").

²⁶ None of the networks involved in the retransmission consent negotiations described in detail in Cox's opening comments made Cox a cash offer for carriage of its O&Os. Cox Comments at 42-47.

stations (in lieu of carriage of the networks' non-broadcast programming),²⁷ the adverse impact on cable consumers would be the same: programming costs, and consumers' cable rates, would continue to rise rapidly.

The inflationary impact on programming costs and the reduction of consumer choice that local cable customers are experiencing today are the direct result of the substantial leverage accorded to networks through their national television station footprint. Retransmission consent is not the problem. The networks' ability to misuse the retransmission consent negotiation process by leveraging their ownership of numerous stations in many of the country's largest television markets is the problem. And, the problem will be greatly exacerbated should the networks be permitted to expand their television station ownership even further.

Second, as Cox, NAB/NASA and other commenters have explained, the analytical framework used by the *1984 Order* was infirm.²⁸ It entirely ignored localism, the bedrock principle of the American broadcast allocation system. And its concept of diversity ignored reality.²⁹ For example, the *1984 Order* improperly dismissed the potential for viewers in local markets to obtain exposure to a greater range of ideas if ownership of television stations nationwide were not concentrated in the hands of a few network conglomerates. Yet as the networks themselves concede in their comments, there is no iron curtain separating local markets and their citizens from one another in these United States, no impregnable walls to bar their exchange of ideas. The networks' own examples make clear that ideas do migrate from one

²⁷ See, e.g., ACA Retransmission Petition First Supplement, at 8-11 (providing examples of Disney/ABC demands of inflated cash compensation for carriage of ABC O&O stations as a tactic to force carriage of Disney-owned cable channels).

²⁸ See, e.g., Cox Comments at 55-61; NAB/NASA Comments at 66-71.

²⁹ See Cox Comments at 55-61.

local market to another through interpersonal communications and other means.³⁰ Moreover, in Cox's experience, television stations under pressure to optimize their performance do monitor and learn about what stations in other markets are doing, and take advantage of these cross-fertilization opportunities to introduce innovations in their own local communities. Accordingly, having a diverse mix of speakers throughout the nation enriches the national debate and increases the flow of ideas and innovations to consumers in local markets. Assigning television licenses to a handful of national program distributors whose principal incentive is to clear their mass appeal programming makes it much less likely that this type of cross-fertilization will occur.

For all of the foregoing reasons and those detailed in the opening comments of Cox and other supporters of the national television ownership cap, the Commission must depart from the conclusions of the *1984 Order*.

B. Supporters of the National Television Ownership Cap Have Submitted the Very Type of Evidence Needed to Preserve the Cap, and the Networks Have Confirmed That Evidence.

Proponents of the 35 percent national television ownership cap also have submitted the very type of evidence needed to preserve the cap under the evidentiary standard established by the D.C. Circuit. Included within the evidentiary record are:

- industry statistics that demonstrate the networks' rapid extension of their web of media ownership interests, particularly following the relaxation of the national television ownership cap from 25 percent to 35 percent;³¹
- industry data, including repurposing, cross-promotion and preemption provisions of network affiliation agreements past and present, that confirm the networks are using their increasing

³⁰ See, e.g., Comments of Fox Entertainment Group, Inc. and Fox Television Stations, Inc., National Broadcasting Company, Inc. and Telemundo Communications Group, Inc., and Viacom, at 23-24 ("Joint Network Comments").

³¹ See, e.g., Cox Comments at 20-24, Appendices A & B; NAB/NASA Comments at 31-39.

power to limit local television stations' ability to make programming decisions based on the needs and tastes of their local communities;³²

- NAB/NASA's survey of network affiliates (providing nearly 1,000 examples of affiliate preemptions) and other data regarding preemption practices which demonstrate that affiliates preempt network programming in order to tailor their programming to the needs of their local communities;³³
- preemption statistics selectively submitted by the networks that, as shown by NAB/NASA's analysis, confirm that network O&Os are far less likely than affiliates to preempt network programming;³⁴
- industry data that show that affiliates engage in a vigorous dialogue with their networks to ensure that network programming satisfies local communities' needs and tastes;³⁵
- economic analysis and supporting real-life examples submitted by Cox and by the American Cable Association Petition for Inquiry into Retransmission Consent Practices that show that the networks are using their national television station footprint in retransmission negotiations to force local cable operators to carry network-owned non-broadcast programming at inflated costs;³⁶
- economic analysis by Professors Marius Schwartz and Daniel Vincent of the data from Media Ownership Working Group Study No. 7, which indicates that affiliates outperform O&Os in the quality of local news and public affairs programming;³⁷ and
- economic studies by Professors Schwartz and Vincent and commenters that show that the programming decisions of affiliates are more closely attuned to the interests of local communities than the programming decisions of O&Os.³⁸

Moreover, far from undermining this wealth of factual data, the networks' arguments and evidence only bolster the case for retaining the cap. For example, the networks acknowledge that the importance of their mass appeal programming to television viewers (and thus local

³² See, e.g., Cox Comments at 26-41; NAB/NASA Comments at 39-45.

³³ See, e.g., NAB/NASA Comments at 15-27, Tables 1 & 2, Attachment 2.

³⁴ NAB/NASA Reply Comments.

³⁵ See, e.g., NAB/NASA Comments at 27-31, Table 3.

³⁶ See Cox Comments at 41-47; ACA Retransmission Petition First Supplement.

³⁷ NAB/NASA Comments at 45-49, Attachment 8; NAB/NASA Reply Comments.

³⁸ See, e.g., NAB/NASA Comments, Attachment 1; NAB/NASA Reply Comments; Cox Comments at 26-41.

affiliates) has only increased, not decreased, over time. As NBC president Jeff Zucker recently stated, increased audience fragmentation actually enhances the value of networks to advertisers. In Mr. Zucker's words, "as the TV environment gets more and more crowded with more and more channels, network TV becomes more and more valuable."³⁹ The fragmented media landscape strengthens the networks not only in their dealings with advertisers and program producers (because the networks are the media entities that can deliver the largest mass audiences), but also in their dealings with affiliates (because local stations need network affiliation more than ever for survival). Of course, relaxing the national television ownership cap even further would give the networks even greater market power, both by virtue of their increased, direct ownership of local television stations and the increased threat that they would terminate their relationship with an affiliate if the latter did not obey network dictates.

Similarly, the networks agree with Cox and other supporters of the 35 percent cap that the Commission should consider all programming carried on local television stations, not simply news and public affairs programming, when making its public interest determination.⁴⁰ Indeed, the networks urge the Commission to consider a wide range of programming when assessing the impact of broadcast ownership rules on viewpoint diversity, explaining that, "as a purely factual

³⁹ Valerie Milano, *NBC's Zucker Says Audience Fragmentation Increases Network Value*, COMM. DAILY, Jan. 21, 2003, at 9.

⁴⁰ See, e.g., Cox Comments at 13-15; Joint Network Comments at 8-9. Cox also takes this opportunity to clarify the situation regarding the production of news programming by Cox's KIRO-TV for Viacom CBS's O&O KSTW in Seattle. The Comments of the American Federation of Television and Radio Artists and Writers Guild of America, East, complained that this arrangement caused a decrease in news programming for the public. *Id.* at ¶ 59. In fact, the opposite is true. First, as noted in the same comments, *id.*, Viacom CBS had dismantled the news operation at KSTW, so that the community served by KSTW would have received no local news programming from the station absent the KIRO-TV production. Second, Viacom CBS and KSTW came to KIRO-TV to request that the latter produce a separate, unique news program for KSTW that is not part of the KIRO-TV program lineup. Consequently, Cox's participation in

matter, news and public affairs programming should not be the sole focus of the Commission's viewpoint diversity concerns because a wide range of programs contribute to viewpoint diversity."⁴¹ Although the networks inexplicably focus exclusively on news and public affairs programming in their brief discussion of localism,⁴² there is no rational basis for adopting such a limited view of this critical broadcast principle. As with diversity, the Commission necessarily must consider the full slate of broadcast programming in addressing localism concerns.

Finally, although the networks give short shrift to the concept of localism, the evidence they do provide supports the affiliates' position on this issue, not their own. The networks claim, for example, that the Commission should not concern itself with protecting localism because O&Os and affiliates behave similarly in the market. But this statement is belied even by the sketchy information on preemption practices included in the networks' comments – information which reveals that affiliates are in fact significantly more likely to preempt network

this arrangement actually increased the amount of unique local news programming provided to the local community.

⁴¹ Joint Network Comments at 9. The Media Ownership Working Group Study No. 5 purports to analyze program diversity, but erroneously defines diversity as the offering of various program "formats" such as dramas, comedies or movies. Mara Einstein, *Program Diversity and the Program Selection Process on Broadcast Network Television*, at 32 (September 2002). Neither Congress nor Commission precedent has ever recognized such a formulation of the diversity principle, however. The *Notice* cites the *1960 Programming Policy Statement* as supporting this formulation of diversity, but the cited passage does not stand for any such proposition. *Notice*, 17 FCC Rcd 18503, at ¶ 38 (quoting, *Commission en banc Programming Inquiry*, Report and Statement of Policy, 44 FCC 2303, 2314 (1960) ("*1960 Programming Policy Statement*")). Rather, it discusses the requirement that broadcast stations serve their local communities by providing "opportunity for local self-expression," "the development and use of local talent," "service to minority groups" and a variety of programs directed to local community interests such as religion, agriculture and sports. *Id.* These requirements are not met, and diversity and other public benefits do not result, when (as observed by the study) the networks switch their focus from dramas and movies to sitcoms and reality shows in order to increase their profits.

⁴² Joint Network Comments at 35.

programming than O&Os.⁴³ Similarly, although the networks erroneously equate localism with local content and focus myopically on the amount and quality of news and public affairs programming carried by O&Os and affiliates, the data they submit fails to rebut the NAB/NASA analysis and data showing that ABC, NBC and CBS O&Os air roughly the same amount of local news and public affairs programming as affiliates, while affiliates win more local news awards. In sum, the data and arguments presented by the networks confirm, rather than contradict, the extensive record supporting retention of the 35 percent national television ownership cap.

C. The Networks' Argument that the National Television Ownership Cap Cannot Be Retained in View of the Multiplicity of Other Media Outlets Available to Consumers Is Unavailing.

The networks' cry for elimination of the national television ownership cap relies largely on arguments that American consumers today have access to a wide range of media outlets and an even wider range of diverse viewpoints, and that they use these different outlets frequently and freely. The networks' arguments are variations on the same theme – i.e., the assertion that the availability of (1) the antitrust laws and (2) competition from other media outlets eliminates any basis for a national television ownership cap.⁴⁴ Yet the networks already have made these arguments to the courts, and the D.C. Circuit expressly rejected them in February 2002 in the

⁴³ The preemption data submitted by the networks is incomplete and selective in both scope and duration (limited, for example, to prime time preemptions from the year 2001). Nevertheless, this data confirms that affiliates preempt network programming far more often than O&Os. *See, e.g.*, Joint Network Comments at 39 (affiliates preempted on average 9.5 hours while O&Os preempted 6.8 hours of prime time programming in 2001); Comments of the Walt Disney Company, Exhibit G (affiliates preempted an average of 10.99 hours in prime time and 6.76 hours of sports programming, while O&Os preempted 2.9 hours in prime time and 1.3 hours in sports programming in 2001). Moreover, television station preemption practices are only one factor in assessing whether broadcast licensees are fulfilling their obligations to serve their local communities.

⁴⁴ By contrast, as explained in Section III below, the availability of other media outlets is relevant to the Commission's assessment of whether the local broadcast ownership rules should be eliminated or relaxed.

Fox case. The court's decision reflects its clear understanding that the networks' arguments are simply irrelevant to the central inquiry regarding retention of the national television ownership cap.

1. The Courts and the Commission Have Rejected The Networks' "Multiple Outlets" Arguments.

The *Fox* court expressly rejected the networks' argument that the growth of competition from other media outlets such as cable, satellite and the Internet has eliminated any basis for retention of the national television ownership cap. In explaining the requirements of Section 202(h), the court stated that "[a] rule may be retained if it is necessary 'in the public interest;' it need not be necessary specifically to safeguard competition."⁴⁵ Rejecting the networks' assertion that the Commission cannot limit national television ownership in the name of diversity alone, the court ruled that the Commission could justify retention of the 35 percent national cap solely on the basis of diversity or localism concerns (supported, of course, by an appropriate record and reasoned decision making).⁴⁶

In their comments in this proceeding, the networks continue to urge the Commission to eliminate the national television ownership cap on the ground that, given the availability of other media outlets such as cable, satellite and the Internet, "the factual underpinnings of the spectrum scarcity rationale of broadcast regulation . . . no longer are valid (if they ever were)."⁴⁷ This is a

⁴⁵ *Fox*, 280 F.3d at 1052.

⁴⁶ *Id.* at 1042.

⁴⁷ Joint Network Comments at v. Cox itself has argued that spectrum scarcity should no longer be considered when evaluating the newspaper-broadcast cross-ownership restriction under the First Amendment. See, e.g., Comments of Cox Enterprises, Inc., MM Docket No. 01-235, MM Docket No. 96-197, filed December 3, 2001. Although the court in both *Fox* and *Sinclair* has since reaffirmed the continuing vitality of the scarcity rationale, the court did make it clear in *Sinclair* that the Commission could properly consider the availability of other media outlets when determining whether to modify its local broadcast ownership rules. *Sinclair*, 284 F.2d at 164-65.

direct restatement of the networks' argument in *Fox* that "in today's populous media marketplace the 'scarcity' rationale . . . 'makes no sense' as a reason for regulating ownership."⁴⁸ The networks simply ignore the *Fox* court's express findings that, "contrary to the networks' express protestations, the scarcity rationale is implicated in this case" and will serve as binding precedent until revisited by the Supreme Court.⁴⁹ Moreover, whether or not spectrum scarcity lives on, the availability of other media outlets in the marketplace is not relevant to an assessment of whether the 35 percent national television ownership cap is necessary to protect diversity and localism, for all of the reasons described in these and other comments.

Equally baseless is the network's related argument that "[t]he antitrust laws will prohibit consolidation in economic markets long before it can become a threat to competition in the marketplace of ideas and, therefore, no structural media ownership regulations are required to achieve the Commission's policy goals."⁵⁰ The courts and the Commission consistently have rejected such arguments. As the Supreme Court has emphasized, "federal policy . . . has long favored preserving a multiplicity of broadcast outlets regardless of whether the conduct that threatens it is motivated by anticompetitive animus or rises to the level of an antitrust violation."⁵¹

Indeed, in its recent decision to extend the cable program exclusivity rule, the Commission rejected arguments that "existing antitrust laws provide a remedial approach that is 'less restrictive' than the exclusivity prohibition and therefore retention of the prohibition cannot meet the intermediate scrutiny test's 'narrowly tailoring' requirement" applicable to cable

⁴⁸ *Fox*, 280 F.3d at 1045.

⁴⁹ *Id.* at 1045-46.

⁵⁰ Joint Network Comments at iv.

⁵¹ *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 194 (1997) ("*Turner II*").

regulation.⁵² The Commission stated that, “[b]y passing Section 628, Congress already determined that antitrust laws were not a viable alternative for achieving the government’s goals in this instance.”⁵³ Likewise, the Commission ruled that other program access regulations cannot serve as adequate substitutes for the cable program exclusivity prohibition: “despite the existence of these other program access provisions, Congress found the exclusivity prohibition of Section 628(c)(2)(D) to be necessary to preserve and protect competition and diversity.”⁵⁴ Given the critical role that the national television ownership cap plays in protecting not only competition and diversity but also localism,⁵⁵ the same reasoning applies with even greater force in this case. Congress chose to enact a national television ownership cap notwithstanding the existence of the antitrust laws and local ownership rules, and their existence thus does not render the national ownership cap redundant.⁵⁶

Finally, recent court and Commission decisions fully recognize that the Commission need not consider other media outlets when formulating national ownership restrictions simply

⁵² *Program Access Order*, 17 FCC Rcd at 12143, ¶ 45 n.138.

⁵³ *Id.*

⁵⁴ *Id.* at 12153-54, ¶ 65 n.206.

⁵⁵ Plainly, the antitrust laws, aimed at preserving existing competition, do nothing to address localism concerns.

⁵⁶ Moreover, relying solely on antitrust laws to protect the government’s interests in this case would be inconsistent with the Commission’s stated goal of providing certainty to marketplace participants when revising its broadcast ownership rules. As the Commission stated when it revised the one-to-a-market rule in the last biennial review,

The new three-part rule also ensures application of a clear, reasoned standard. One of our primary goals in this proceeding is to provide concrete guidance to applicants and the public about the permissibility of proposed transactions. This minimizes the burdens involved with complying with and enforcing our rules. It also promotes greater consistency in our decision-making. . . . [T]he new rule will ease administrative burdens and will provide predictability to broadcasters in structuring their business transactions.

Duopoly Order, 14 FCC Rcd at 12948, ¶ 103.

because it examines the availability of such outlets when evaluating its local broadcast ownership rules. In reviewing the national cable ownership cap and “each additional ‘voice’ [that] may be said to enhance diversity” in that context, the D.C. Circuit only required the Commission to consider the effect on diversity of other MVPDs (specifically, DBS) when setting the cable cap; other media outlets such as television, radio, newspapers or the Internet were not considered to be a relevant part of the mix.⁵⁷ The court adopted this limited “voices” approach notwithstanding the specific directive of Section 613(f)(2)(E) that, when adopting a national cable ownership cap, the Commission must “make such rules and regulations reflect the dynamic nature of the communications marketplace.”⁵⁸ The Commission since has followed a similar path in deciding to extend the cable program exclusivity prohibition for another five years. Rather than examining all outlets in the media marketplace to determine whether diversity would be served by the rule’s extension, the agency examined only competition and diversity among MVPD outlets.⁵⁹

The precept that the Commission need not consider all media outlets when assessing its national ownership rules is particularly salient in the area of broadcast regulation. The courts have never deviated from the principle that,

Despite the growing importance of cable television and alternative technologies, broadcasting is demonstrably a principal source of information and entertainment for a great part of the Nation’s population.

Though it is but one of many means for communication, by tradition and use for decades now it has been an essential part of

⁵⁷ *Time Warner Entertainment Co., L.P. v. FCC*, 240 F.3d 1126, 1134-35 (2001).

⁵⁸ 47 U.S.C. § 533(f)(2)(E).

⁵⁹ *See, e.g., Program Access Order*, 17 FCC Rcd at 12152, ¶ 62 (determination of whether to retain the programming exclusivity prohibition focuses on “ensuring that as many MVPDs as possible remain viable distributors of video programming”).

the national discourse on subjects across the whole spectrum of speech, thought, and expression.⁶⁰

Chairman Powell echoed this fundamental principle when he observed that broadcasting is unique among media platforms because it is free to the public and “the public value of having a diverse free medium . . . warrants some government attention to undue concentration.”⁶¹

In short, both recent court decisions and Commission precedent negate the networks’ argument that the availability of the antitrust laws and the growth of other media outlets eliminate the basis for retaining the 35 percent national television ownership cap to protect the public interest.

2. The Growth of Other Media Outlets Does Not Implicate the Government’s Interest in Retaining the National Television Ownership Cap.

Even putting aside the legal precedents, the networks’ argument concerning the expansion of media outlets does not govern the central question of whether the cap should be retained from an analytical standpoint. First, the existence of other outlets is not germane to the question of localism. Second, it is not relevant to the specific diversity interests implicated by the national cap.

Policymakers’ decision not to rely simply on the number of independent media voices available to consumers when evaluating the effect of national ownership caps on diversity

⁶⁰ *Turner II*, 520 U.S. at 190, 194 (discussing Congressional interest in “preserving a multiplicity of broadcasters”) (citations and internal quotation marks omitted).

⁶¹ *Duopoly Order*, 14 FCC Rcd at 12987-88 (Separate Statement of Commissioner Michael K. Powell) (“In all of the discussions about diversity and localism, I believe we lose sight of something that is unique about broadcasting It is the fact that broadcasting is free. There are substantial public benefits that flow from the free broadcasting business model. It provides access by all of our citizens to news, entertainment, and information, regardless of their socio-economic class. It provides valuable information to citizens in natural disasters who cannot access their phones or cable systems because of downed lines or loss of power. It lets people in a mobile society stay connected to the outside world, as well as individuals in remote areas.”).

reflects the fundamental differences between the goals underlying local and national restrictions. Both types of restrictions are intended, generally, to further the government's interests in competition, diversity and, where relevant, localism. But Congress, the Commission and the courts all have recognized that the specific type of competition or diversity at issue may well vary depending on whether national or local market dynamics and distributors are involved – hence the *Fox* court's holding that the local television ownership rules and the national cap “are not closely related, analytically.”⁶²

In the case of the television industry, Congress intentionally established a regulatory framework that would ensure that television licensees program their stations to serve their local communities. “Congress designed this system of allocation to afford each community of appreciable size an over-the-air source of information and an outlet for exchange on matters of local concern.”⁶³ As Chairman Powell observed in his January 24, 2003, appearance on C-SPAN, the American television broadcasting system is different from and more effective than those of other nations such as Canada, France and the UK in ensuring the diversity of ideas essential to our federal system of government. Congress rejected an approach (utilized in many other countries) that would have assigned television licenses to a handful of national program distributors, who would then broadcast an identical slate of programming in each local community.⁶⁴ Although Congress was aware that locally licensed stations would offer their viewers some nationally distributed programming, it designed the statutory framework to ensure

⁶² *Fox*, 280 F.3d at 1044.

⁶³ *Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622, 663 (1994).

⁶⁴ As the Commission noted in the *1984 Order*, “early [radio] networks owned or controlled most radio stations and provided the bulk of programming . . . [s]tructurally radio was tending toward a concentration of voices. Today's networks primarily provide specialized programming for only a portion of the day. The result has been to increase diversity rather than uniformity.” *1984 Order* at 28 n.31 (citations omitted).

that the overall programming on local stations would be unique to each station and would reflect the needs and interests of its specific local community.⁶⁵

In essence, the broadcast framework established by Congress provided for television and radio stations to be localized, not nationalized, media outlets, and envisioned that each station would provide an appropriately diverse balance of programming to its audience.⁶⁶ Determining how many other media voices there may be in a particular market is not germane to this equation; what is relevant is whether locally licensed stations are responding to local market forces when making programming choices.

The networks' business model historically has been to produce and distribute national programming of mass appeal. The networks own extensive national programming interests, and their profitability depends on delivering to advertisers a mass national audience for each program. Their agenda thus is driven by their need to maximize the number of eyeballs nationwide that view each of their programs. The networks achieve this result by favoring mass appeal, national programming over niche programming or local programming. They also achieve it through repurposing and cross-promotion of their content across a range of media platforms. Dividing the national audience among multiple local or niche programs, particularly those not network-owned, is directly contrary to the networks' fundamental business model.

In contrast, operators of local distribution outlets focus on reaching as many segments of the local audience as possible. For local newspapers, cable systems, television and radio stations, both advertising and subscription revenues depend on serving the maximum number of local consumers; these operators cannot afford to limit themselves to distributing only mass

⁶⁵ See Cox Comments at 9-17.

⁶⁶ See *id.*; *Fox*, 280 F.3d at 1042.

appeal programming that ignores the range of local audience interests. Rather than concentrating on recouping investments in any specific content, these operators (whether they are group owned or not) maximize their profits by distributing content aimed at satisfying all segments of the local audience. Thus, for example, newspapers have different sections to cover niche interests, cable systems carry niche channels, and local broadcasters carry a wide assortment of programming designed to appeal to the range of local audience demands. The incentive to stay attuned to local needs is only enhanced, moreover, when a single owner operates multiple outlets in the same local market. The substantial investment that such owners make in their local communities provides an especially strong incentive for them to meet the diverse needs of local media consumers, and any efficiencies they enjoy from such common ownership give them greater resources to achieve this goal.⁶⁷

The public interest in ensuring that consumers have access to at least some localized outlets that provide programming across the range of local audience interests is the very diversity interest that Congress intended to promote by establishing a local licensing system for television and radio stations.⁶⁸ Increasing the number of television stations that a network can own

⁶⁷ Thus, for example, the record in the newspaper-broadcast cross-ownership proceeding demonstrates that common ownership of local newspapers and broadcast stations actually increases diversity as these strengthened local outlets are able to provide more programming, particularly programming aimed at local community needs and interests. *See, e.g.*, Reply Comments of Newspaper Association of America, MM Docket No. 01-235, MM Docket No. 96-197, filed February 15, 2002, at 23-25; Reply Comments of Morris Communications, MM Docket No. 01-235, MM Docket No. 96-197, filed February 15, 2002, at 3; Reply Comments of Journal Broadcasting Corporation, MM Docket No. 01-235, MM Docket No. 96-197, filed February 15, 2002, at 3-4; Reply Comments of Tribune Company, MM Docket No. 01-235, MM Docket No. 96-197, filed February 15, 2002, at 3-5. These reply comments were filed in response to *Cross-Ownership of Broadcast Stations and Newspapers, Newspaper/Radio Cross-Ownership Waiver Policy*, Order and Notice of Proposed Rulemaking, 16 FCC Rcd 17283 (2001) (“*Newspaper/Broadcast Cross-Ownership NPRM*”).

⁶⁸ The Commission has looked at different forms of diversity in different contexts. For example, in deciding to retain the cable program exclusivity prohibition, the Commission observed that,

nationwide increases both (a) the number of O&Os that face unrelenting pressure to clear the full slate of the networks' mass appeal programming, whether or not it responds to local needs, and (b) the networks' ability to pressure their affiliates to clear that programming and to acquiesce to cross-promotion and re-purposing practices that further the networks' national distribution agenda rather than local community interests.⁶⁹ The national cap thus bears directly on whether television stations are localized outlets that offer a diverse mix of national and local content to their local communities, as Congress intended. Both the *1984 Order* and the networks' comments in this proceeding overlook entirely Congress's desire that the Commission protect this type of diversity through its national television ownership cap.

III. THE RECORD DEFINITELY SHOWS THAT THE NEWSPAPER-BROADCAST CROSS-OWNERSHIP RULE SHOULD BE REPEALED.

In contrast to the national television ownership cap, the newspaper-broadcast cross-ownership rule cannot survive the evidentiary standard established by the courts. Although the D.C. Circuit in *Fox* rejected the networks' reliance on other media outlets to support their argument for elimination of the national ownership cap, the same court observed in *Sinclair* that, despite the spectrum scarcity rationale, the Commission had explained adequately its relaxation of the duopoly rule – relaxation which in large part was driven by the expansion of media outlets in local markets.⁷⁰ Because the court in *Sinclair* also held that the Commission must be

while “[c]ommenters have almost exclusively devoted comment on the issue of diversity to the prohibition’s impact on programming diversity, . . . in considering whether to retain the exclusivity prohibition, our primary focus should be on preserving and protecting diversity in the distribution of video programming.” *Program Access Order*, 17 FCC Rcd 12152, ¶ 62. The Commission concluded that the exclusivity prohibition was needed to ensure diversity in the number of outlets distributing that video programming (which in that case was interpreted to mean “ensuring that as many MVPDs as possible remain viable distributors of video programming”), despite its conclusion that viewpoint diversity was not affected by the rule. *Id.*

⁶⁹ Cox Comments at 25-41, 61-67; NASA/NAB Comments at 15-45.

⁷⁰ *Sinclair*, 284 F.3d at 162-65.

consistent in its analysis of its various local broadcast ownership rules, the Commission now must eliminate the newspaper-broadcast rule.

Fox vacated the cable-broadcast rule because the Commission had not considered the expansion of media outlets in local markets and had failed to reconcile its retention of this local cross-ownership rule with its television duopoly rule.⁷¹ Similarly, *Sinclair* remanded the duopoly rule because there was no rational basis for counting fewer types of “voices” under the duopoly rule than under the one-to-a-market rule.⁷² In this case, because the Commission already has found that competition and diversity are not harmed if a broadcaster owns multiple in-market media properties, the Commission cannot, with any consistency, conclude that a local newspaper-broadcast combination should be disallowed. The Commission has no rational basis for counting fewer types of “voices” or being more concerned with diversity and competition between the merging parties when evaluating transactions involving a newspaper and a broadcaster than when evaluating transactions involving broadcasters alone.

Indeed, if the Commission were to ignore the courts’ consistency requirement, it would have to be far more concerned with competition and diversity, and more restrictive in its consideration of relevant “voices,” when evaluating the merger of broadcasters (which serve viewers and compete for advertising over the same medium), than when evaluating the merger of newspapers and broadcasters (which operate over entirely different media platforms). Furthermore, given the spectrum scarcity rationale and the more extensive First Amendment protections afforded to newspapers, the Commission would have to meet a far higher evidentiary standard to justify a rule that prohibited a newspaper owner from acquiring a broadcaster.

⁷¹ *Fox*, 280 F.3d at 1050-52.

⁷² *Sinclair*, 284 F.3d at 160, 162-65.

Apart from the requirement for consistency between the Commission's local ownership rules, the Commission's extensive record in the newspaper-broadcast rulemaking proceeding also mandates elimination of the rule. As was discussed extensively in the comments and reply comments filed in 2001 and 2002, and summarized in Cox's opening comments, the record establishes that the government's interest in protecting diversity and competition is not harmed by allowing a local newspaper to combine with a local broadcast station.⁷³ In addition, Cox is attaching as Appendix A to these reply comments representative examples of cross-criticisms between Cox-owned newspaper and broadcast outlets in the grandfathered Atlanta market. These examples further demonstrate that common ownership does not translate into common editorial viewpoints.⁷⁴

In contrast to the national television ownership cap, the expansion of media outlets available to consumers in local markets is relevant to the Commission's analysis of its local ownership rules, even if spectrum scarcity lives on. The importance of ensuring that consumers have access to localized media outlets is not implicated by the Commission's local broadcast restrictions. Permitting one local outlet to purchase another local outlet does not make the

⁷³ See Cox Comments at 70-73.

⁷⁴ Cox also takes this opportunity to correct the erroneous assertion in the Comments of the Consumer Federation of America, Consumers Union, Center for Digital Democracy, and Media Access Project, at 234, that the Atlanta market has suffered from the merger of the competing morning newspaper, the *Atlanta Journal*, and evening newspaper, the *Atlanta Constitution*. In fact, Cox has owned both of these newspapers since 1950, and the two papers have maintained their editorial independence both before and after they were combined in 2001 due to declining circulation for the *Atlanta Journal*. Today, the combined *Atlanta Journal-Constitution* has more local news and editorial space than either paper had alone. Both editors of the respective papers' editorial pages were retained, and the two editors continue to write columns, often (as they have in the past) with opposing views. Attached as Appendix B to these reply comments are representative examples of the daily three-page editorial section of the *Atlanta Journal-Constitution*.

combination less local; to the contrary, it may well enhance the ability of these outlets to respond to local market needs.

Just as the Commission found benefits from the common ownership of television stations in a local market, there are benefits from common ownership of local broadcast stations and newspapers. The record establishes that common ownership of broadcast stations and newspapers strengthens local media outlets.⁷⁵ Economic efficiencies aside, the more that an owner knows about a local community, the better it can serve all segments of that community. Close market study of the needs and tastes of the local community provides the engine of success for local outlets. Cox has followed this strategy to bring its television stations consistently to the top of its local markets in ranking.⁷⁶ Cox and other owners of local outlets want the regulatory flexibility to increase and diversify their investments to serve the local communities whose needs and interests they already understand. Their substantial investment in the local market gives owners of multiple local outlets especially strong incentives and capabilities to meet the diverse needs of the local community. Furthermore, diversification of their assets in local markets enables these owners to weather difficult economic times that may hit one industry harder than another. Thus, for example, during the recent downturns that have struck the newspaper industry, Cox has maintained its policy of not laying off any journalists, in part because its diversified investment in other media sectors has enabled it to do so.

Such diversification is especially important to maintain the vitality of the newspaper industry as a valuable contributor to the national discourse. The Media Bureau Staff Research

⁷⁵ See Cox Comments at 70-74.

⁷⁶ For example, ninety percent of Cox's television stations consistently are number one in their markets for local news. Since Cox stations are affiliated with all four networks, these rankings are not related to network rankings.

Paper comparing media outlets and owners for ten selected markets found that “the count of daily newspapers/owners has, in general, remained flat in the ten markets since 1960,” while all other media outlets have grown dramatically.⁷⁷ The beleaguered position of the newspaper industry demonstrates the need to lift the regulatory restriction on their ability to expand their investments and explore new opportunities to serve their local communities. Accordingly, based on both the requirement for consistency among local ownership restrictions and the extensive record evidence in this proceeding, the Commission must eliminate the newspaper-broadcast ownership rule in order to serve the public interest.

IV. CONCLUSION.

For the foregoing reasons, the public interest mandates retention of the 35% national television ownership cap and elimination of the newspaper-broadcast cross-ownership rule.

Respectfully submitted,

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⁷⁷ Scott Roberts, Jane Frenette and Dione Stearns, *A Comparison of Media Outlets and Owners for Ten Selected Markets (1960, 1980, 2000)*, September 2002, at 1.

APPENDIX A



THE NEAL BOORTZ SHOW

*America's Rude Awakening
You shall know the truth and the
truth shall make you mad.*

Monday January 13, 2003

Listen on the Internet!

"I'll try to be nicer, If you try to be
smarter"

Check out the Boortz Sponsors!

**In the 21st century stupid people will
have an inexhaustible supply of cheap,
easy ways to screw up their lives."
Duende**

**[Click here for an update on the privatization efforts for Hartsfield
International Airport.](#)**

OK, HE DIED ...

... and we're all sorry. It's sad, but it's not the end of the world and it certainly isn't the most important thing that happened over the weekend. Do we now have to judge every local, national and international news story with an eye to how it interacts with the death of a Bee Gee?

A LESSON IN CLASS WARFARE RHETORIC

We'll key on just this one sentence from a column by Dean Baker in the January 9th edition of the Atlanta Journal-Constitution.

"Bush wants to take \$650 billion from the public and give the bulk of it to

the richest 1 percent of the country."

Class warfare rhetoric? Of course. That sentence was written not to make any valid point, but to inflame the hatred and jealousy that the left has so carefully cultivated and nurtured in middle and lower income Americans. Note, please, that Baker never mentioned in his opinion piece the incontrovertible fact that the "richest" 1 percent he's talking about earn about 17 percent of all income but pay close to 39 percent of all taxes.

We're going to use that sentence from Baker's column to illustrate the basic truth that liberal dogma (and this "richest 1 percent" nonsense is just that) cannot withstand the application of logic or fact. We'll also use it to show just why leftists fail so miserably at talk radio.

OK .. power up your brains. Let's look at Baker's sentence. What happens when taxes are cut? Let's say that the tax rate is cut by two percent. This means that when you get your next pay check your employer will deduct two percent less from that paycheck than he deducted from the last one. In other words, you will get to keep more of the money you have earned for that pay period. So just where did that extra 2 percent in your paycheck come from? It came from your employer, not the government. You worked, you punched the time clock, you submitted your hours, and the payroll department multiplied the number of hours by your hourly pay rate. Then the payroll department deducts a certain percentage of your pay from your check and sends it to the federal government. This week that figure will be 2 percent less than it was last week. Why? Because of the tax cut.

OK, OK ... I know that I'm being far too precise here, but you have to remember that a lot of the people who will hear this were "educated," if you want to call it that, in schools owned and operated by the government.

But wait a minute! Baker says that "Bush wants to take \$650 billion from the public." There's nothing being taken from the public. That money was never the public's money. It was your employer's money. Now it's yours because you worked for it. How can Bush take money from the public that never belonged to the public? Neat trick, huh?

Then Baker says "... and give the bulk of it to the richest 1 percent of the country." Give? Bush isn't giving any money to these people. None! Nada!

These people are simply being allowed to keep money that they worked for and earned!

Income redistribution only occurs when money is taken from someone who earned it and given to someone who didn't earn it. When you tax someone and spend that money on, say, food stamps, an income redistribution has occurred. When you allow the person who worked for the money to keep it .. no redistribution.

So .. now we ask ourselves just why Baker used the "take from the public" line in his column. Simple .. because it incites class hatred. It tells people that rich people are "taking" something from them and "giving" it to someone else, and that they should be very angry about it. Incited class hatred. Class warfare ... plain and simple.

Now ... to that talk radio thing. This won't take long. If Dean Baker were a talk show host and he used that "take and give" bit on the air, his callers would soon set him straight. Remember, he can hide as a columnist. He writes and runs. As a talk show host .. no such luxury.

WE NEED MORE MONEY! LET'S SOAK THE RICH!

Wants higher state income taxes ... but only on the wealthy. Now let me tell you the way this will work. There's a budget deficit right now, so Davis is looking for more revenue. Let's say that they do raise taxes on the rich to handle the deficit. Let's also say that four years from now the budget deficit is under control and the state is actually showing a budget surplus! To increase the drama, let's say that California has a new Republican governor who wants to push for tax cuts. He proposes that the higher taxes levied on the wealthy back in 2003 to cover the deficit be repealed. Immediately you will hear howling from the leftist crowd "That's tax cuts for the rich!"

LET'S PUT THIS STORY IN PERSPECTIVE. CNN SURE DIDN'T

We read this past weekend of demonstrations in Lewiston, Maine in support of Somalians. The reports focused on white racists (yes, real actual racists) who were protesting in Lewiston and the counter-demonstrators who opposed them.

OK, fine. When white-supremacist types pop out of their holes the media should

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LENGTH: 457 words

HEADLINE: Prime-time lingerie: A see-through TV ploy

BYLINE: A. SCOTT WALTON

SOURCE: AJC

BODY:

Don't get me wrong. I love the sight of a fine, fine woman wearing tasteful lingerie (in a room that's not smoke-filled, neon-lighted or liquor-licensed) as much as --- if not much, much more than --- the next guy. But, between you and me, do we really need as objectifying a display of flesh as the one ABC intends to show tonight?

Prudes and perverts alike must be salivatingly curious to see how far (or low) ABC will go with its prime-time telecast of "Victoria's Secret Fashion Show" (9 p.m., WSB, 4824).

As if the concept of a prime-time TV special devoted to lingerie isn't absurd enough, blind opera star Andrea Bocelli will serenade the barely clad beauties as they saunter down the runway, and openly gay British actor Rupert Everett will host the show.

A program devoted to high-priced human coat hangers modeling outfits that only a fraction of females on the whole planet could look halfway decent in may be titillating, but it's not entertainment. Entertainment entails an exhibition of skills: comedic, dramatic, athletic or otherwise. Walking in 4-inch heels without tripping doesn't count.

Readers often remind me, in no uncertain terms, that we should be really careful about how our fashion

coverage portrays females. Lingerie models embody ideals physically unattainable for the vast majority of women.

That, unfortunately, is what makes spectacles like this nationally televised peep show so hard to resist. But what good will come of it?

Will female viewers find catharsis in mumbling "She's not that cute" to themselves?

Will families be brought closer together that evening for no other reason than to make sure the kids don't see it?

The holiday shopping season is starting; do we really want mankind out there shopping for gifts with that on their minds?

The network apparently has no qualms about the broadcast. The Victoria's Secret marketing director says ABC jumped on board just "a few minutes" into his pitch for the program. But how will America react?

Some will view the show as a trivial distraction from the unsettling events of recent weeks. Some will see it as yet another example of what they call "moral decline."

Either way, at least the fact that it's being televised spares us from a repeat of the Internet crash that Victoria's Secret caused when it broadcast a similar show online two years ago.

Out of "professional obligation," I'll have to give the program a quick glimpse, at least. And what I expect to see is little more than the video edition of those unsolicited catalogs that come to me in the mail with odd and irksome frequency. It's something you glance at just in case there's something there you haven't seen before. But it's nothing to be proud of.

GRAPHIC: Photo:

Gisele Bundchen models the Victoria's Secret look, on view tonight on ABC. / Victoria's Secret

LOAD-DATE: November 15, 2001

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The Atlanta Journal and Constitution

December 27, 2002 Friday Home Edition

SECTION: Features; Pg. 1E

LENGTH: 1234 words

HEADLINE: Questionable diet plan a mixed bag for some radio DJs

BYLINE: RODNEY HO

SOURCE: AJC

BODY:

Radio disc jockeys hawk home air filters, teeth whiteners, even laser eye surgery --- rhapsodizing about what happy, satisfied customers they are. And the advertisers pay a premium to have their products touted to listeners by familiar, trustworthy voices.

But such endorsements can sometimes backfire. In recent years hundreds of radio personalities, including several in Atlanta, have promoted Body Solutions, a weight-loss plan whose marketer is being sued by the government for false advertising.

Body Solutions purported to help customers lose weight while they sleep. The Federal Trade Commission filed a lawsuit this month against Mark Nutritionals of San Antonio for "outrageous marketing practices." The company recently filed for Chapter 11 bankruptcy protection.

Locally, personalities on at least 10 radio stations in Atlanta endorsed Body Solutions from 1999 until last summer. Among the participants were some of metro Atlanta's top radio stations, including WSB-AM, oldies Fox 97.1 (WFOX-FM) and R&B V-103 (WVEE-FM).

Endorsers included Fox midday DJ Mitch Elliott, former 96rock drive-time jock Christopher Rude, and the Beat (WTBS-FM) midday jock who goes by the name P.J. The late WGST-AM traffic reporter Keith Kalland also promoted Body Solutions.

The FTC, which chose not to sue individual DJs, said Body Solutions paid jocks who told listeners they could shed pounds on the program without exercise, while scarfing pizza, ice cream and tacos with impunity. The agency also said there was no scientific proof that a Body Solutions formula, which includes aloe vera gel and various herbs and supplements, promoted weight loss.

Howard Beales, chief of the FTC's Bureau of Consumer Protection, criticized the media for accepting these types of advertisers. "We need help from responsible media outlets to keep these kinds of advertising from reaching the public," he said.

Mark Nutritionals used DJs at more than 650 stations nationwide. Listeners responded --- Mark generated \$190 million in sales over three years.

The advertising rates varied depending on the popularity of the station and personality, though it was typically \$100 to \$300 a week for the DJ and potentially thousands for the station itself.

Besides casual, freebie mentions between songs, DJs in spots would cheerfully describe Body Solutions and how it was helping them melt pounds. Indeed, Mark Nutritionals had talent coaches who flew DJs to San Antonio for training in how to give an effective testimonial, said Dave Meszaros, general manager for WSB-AM. He said the company also offered pay incentives to personalities who generated the most leads within a market.

Perfect advocates

DJs for decades have been great marketing tools for diet programs because their odd hours and frequent access to free food tend to encourage paunchiness. Companies like Metabolife and Nutri/System in recent years frequently used DJs, but both fell on hard times.

"It's an advertising category that has been suspect, with a couple of bad apples creating a bad perception," Meszaros said.

Many on-air personalities who used Body Solutions, including some of those named above, didn't return calls or declined to comment. The ones who did defended the product.

Silas "SiMan" Alexander, morning host at Classic Soul 102.5 (WAMJ-FM), used Body Solutions for six months last year when he worked at Kiss. He said he first tried the product for a month, lost a few pounds and decided to endorse it. He ultimately lost 20 pounds, landing at 210 from 230, and said he didn't exercise or change his diet.

"I don't know if the solution itself did anything, but what it did do was give me a reason to stay on a schedule and stay disciplined," he said.

Alexander said the key piece of Body Solutions advice was not eating three hours before he went to sleep --- except the fruity Body Solutions formula at bedtime. "They told me not to sit and lie about the product, not to overdo it," he said. "I only claimed you lose one or two pounds a week. I felt I was honest with people when I advertised it. In the way I worded my endorsements, I don't feel bad."

In the future, Alexander --- who has since regained the weight without Body Solutions --- said he plans to be more careful in endorsing similar products. For now, he's sticking with safer bets like College Park Shoes and Nalley Chevrolet.

Willard, former nighttime jock for Z93 and current morning producer for Moby, said he never made claims that the formula caused pounds to disappear during slumber. "When the product first came out, that was the slant they had," he said. "I don't recall ever saying anything like that. I stuck to the straight and narrow."

He said he lost 34 pounds and seven inches off his waistline over two years with Body Solutions. "It's behavior modification," Willard said. "It didn't work for a lot of folks, but it worked for me. I'm a lot healthier person."

Not every radio personality approached by Body Solutions embraced it. WGST-AM late-afternoon talk-show host Kim "The Kimmer" Peterson, who is paid to promote Quick Weight Loss Centers, was suspicious. "If people got fat in the first place, just because they drink this liquid every night doesn't mean they'll be instantly thin," he said. "The whole thing made me uneasy."

Neal Boortz, a WSB-AM talk show host who endorses a host of products and services, including Taylor Construction and Vision Computers, said a WSB

sales executive asked him to try it. "I was uncomfortable," he said. "After a couple of days [of talking about it on air], I told them I wanted no part of it. I said this is not the proper way to diet. You have to exercise and diet, not use some magic goo."

Revising the message

Larry Cochran, acting chief executive of Mark Nutritionals said the company has agreed to change its advertising to address the FTC's concerns.

The radio companies are also taking a hit to their books. Westwood One, Cox Radio and Infinity Broadcasting have sued Mark Nutritionals for non-payment of ads to the tune of \$10 million, a figure Mark Nutritionals' lawyers dispute. (Cox Radio, which operates WSB-AM, Fox, Kiss and the Beat, is owned by Cox Enterprises, which also owns The Atlanta Journal-Constitution.)

Andrew Saltzman, general manager at 790/The Zone, one of the area's few stand-alone radio stations, said his small company can ill afford the loss of \$30,000 to \$40,000 that Mark Nutritionals owes. Based on the volume of DJ endorsements he saw in Atlanta, he estimates Body Solutions was spending at least \$300,000 a year in the area before the company filed for bankruptcy protection in September.

As a consequence, he said, he wouldn't be surprised if future diet plan companies will be able to get credit the way Body Solutions did. "If you feel some relatively good chance you'll get paid, you'll take a shot," Saltzman said.

But will jaded listeners stop taking radio testimonials seriously?

Eric Seidel, a media trainer and former WGST-AM program director, said he doubts Body Solutions' problems will hurt a radio station or DJ's reputation in any way: "I think listener memories are short." But he is not a fan of many weight-loss programs: "They take advantage of the American psyche for the quick fix, the instant gratification."

The Associated Press contributed to this article.

GRAPHIC: Photo: WFOX-FM disc jockey Mitch Elliott (left) and former 96rock DJ Christopher Rude were among those who endorsed Body Solutions.; Photo: Christopher Rude

LOAD-DATE: December 27, 2002

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The Atlanta Journal and Constitution

September 9, 1999, Thursday, Home Edition

SECTION: Features; Pg. 11D

LENGTH: 545 words

HEADLINE: WSB's Chavis suspended over location incident

BYLINE: Drew Jubera, Staff

SOURCE: Constitution

BODY:

A WSB reporter was suspended for not properly alerting the newsroom assignment desk about her location on a story, a mistake that led some viewers, and even some in the WSB newsroom, to think she was lying about where she was reporting the story from.

Shaunya Chavis was doing a story on a child abuse case in Douglas County on Aug. 25 for WSB's 11 p.m. newscast. Chavis was introduced by anchor Richard Belcher as being in Douglas County, where he thought she was, and where Chavis signed off as being at the end of her report.

However, a passerby who saw her setting up for the story in Fulton County was surprised while watching the news later to see Chavis say she was standing in Douglas County. The viewer called WSB the next day to report the incident.

WSB investigated and took action against Chavis and photographer Jeff Burton. The station determined that the incident was a punishable but not a fireable offense, which it likely would have been if WSB had found that Chavis' actions were intentional. It did not.

Chavis, who has been with the station for five years, returned to work Saturday after a five day suspension. But the incident has taken on a life of its own in the WSB newsroom, as well as in newsrooms at other Atlanta stations. Some people hold that the incident was an innocent, if regrettable, slip by Chavis, while others

believe it was a deliberate deception that threatens the station's integrity.

Reached at home, Chavis said she would not comment on what has been said. She added, "But I am confident my integrity and and good name will remain."

WSB news director Ray Carter, who addressed the entire news staff about the situation for the first time on Wednesday, said, "A violation of station policy did occur and appropriate action has been taken. At WSB we take all of our policies seriously and try to hold ourselves to a high standard.

"Mistakes can be made," he added. "We try to avoid them, but when they happen we take corrective action, which we have done."

Comedians protest BET

More than 100 comedians --- including stars such as Jay Leno, Richard Pryor and Tim Allen --- have signed their names to full-page newspaper ads criticizing Black Entertainment Television for failing to adequately pay performers for their appearances on the cable network's popular late-night show, "Comic View."

The ads are running in newspapers in Atlanta, Los Angeles and Washington, according to a statement released by the American Federation of Television and Radio Artists which is representing the comics in their grievance against the network.

At issue is BET's policy of paying "Comic View" performers a one-time appearance fee of \$ 150, but refusing to pay them residuals for reruns.

The show is one of the few remaining comedy revues on television. It features dozens of unknown comedians trying to get national recognition. D.L. Hughley ("The Hughelys") and Cedric "The Entertainer" ("The Steve Harvey Show") are among the recent "Comic View" alumni who have scored big.

Marcy Polanco, a BET spokeswoman, had no comment. In August the show taped three weeks worth of episodes at the Atrium nightclub in Stone Mountain, prompting rumors that the show was changing location from Los Angeles to Atlanta.

LOAD-DATE: September 9, 1999

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The Atlanta Journal and Constitution

July 19, 2000, Wednesday, Home Edition,
Correction Appended

SECTION: News; Pg. 15A

LENGTH: 1013 words

HEADLINE: Some broadcasters jump gun, but were
right;

WSB apologizes on the air;

SEN. PAUL COVERDELL: 1939-2000

BYLINE: Drew Jubera, John Druckenmiller, Staff

SOURCE: CONSTITUTION

BODY:

Several local TV and radio newsrooms were caught in the embarrassing position of retracting initial stories of Sen. Paul Coverdell's death Tuesday night, minutes after a hospital spokeswoman denied those reports.

TV stations WXIA and WSB, along with WSB and WGST radio, reported shortly before 6:20 p.m. that sources confirmed the senator had died. Within minutes, Nina Montanaro, Piedmont Hospital public affairs director, called the reports "false" and added, "He is in serious condition and he remains in ICU. I'm refuting that report."

At 6:55 p.m., the hospital issued a statement acknowledging his death. The time of death was put at 6:10 p.m. --- apparently confirming the accuracy of the initial reports.

"The fact we were accurate in our report means nothing when you look at the magnitude of the loss," said Dave Roberts, news director at WXIA, which was first with the report of the senator's death. "From a journalistic standpoint, the bottom line is, who cares if you're first? You had better be correct. When someone has a loved one on life support, who cares if the media gets its story? We need to be more sensitive to that."

WSB-TV managing editor Mike Dreaden said he was confident of his station's sources, but felt an apology

was required when the hospital officially denied the senator's death.

"As sure as you may be, when someone calls your story into question the reaction is, 'Let's go double, triple and quadruple confirm that,' " Dreaden says. "It was not the kind of thing you want to get in a battle over on the air. It seemed inappropriate to get into a debate with the hospital, so we didn't."

Neither WAGA nor WGCL reported Coverdell's death until the hospital's official announcement.

Budd McEntee, WAGA news director, said it was difficult watching two competing stations report the senator's death but that he felt a greater responsibility to wait until an official announcement.

"My greatest fear was that the family had not signed off or all been notified, and that we would be jumping the gun with information prior to their acceptance of his official death," McEntee said. "I wanted to make sure everyone in the senator's family had been walked through that process. There was no clear advantage to reporting him deceased before he officially was."

Added WGCL news director Mike Cavender, "What this points to is that when news organizations are trying desperately to confirm a big story, sometimes circumstances are such that information gets confused second by second. I applaud (WSB) for retracting (their story) when they thought they had reported it erroneously. It shows how complex this kind of story can become when you try to run down information in a matter of minutes or seconds."

Ken Charles, WGST's director of programming and news, says his news team "absolutely had to report the story" as it broke from the floor of the Senate.

"South Dakota Sen. Tom Daschle did it on the floor of the Senate at 6:15 p. m.," Charles says, and "we had it on the air at 6:17 p.m." The station took caution, he said, to ensure it was sourced to Daschle.

Evening anchor Lisa Nichols immediately went back on the air to relay the Piedmont announcement, he says, and broke in again just before 7 with confirmation of Coverdell's death.

Chris Camp, news director of WSB radio, says "sources in Washington told us Senator Coverdell had

died." Those sources were credible, he says. "We had no reason not to think they weren't on the up and up.

So when WSB first announced Coverdell's death, "We didn't name anybody . . . We were just quoting sources," Camp says.

The Piedmont announcement denying the reports came minutes later.

"At that point, you're sort of weighing both sides," Camp says. "We felt we had an obligation to go on and retract the original statement. We went with that."

Would WSB handle it differently?

"I'll be talking about this tomorrow morning. We have to let the dust settle on this," Camp said, adding, "It will be on the top of the agenda tomorrow morning."

Piedmont officials weren't available for comment Tuesday night.

At www.ajc.com, The Atlanta Journal-Constitution's Web site, news of Coverdell's death wasn't posted until his passing was confirmed by the hospital just before 7 p.m., said Susan Hardin, ajc.com managing editor.

The broadcasters' Web sites offered mixed updates on Coverdell as of Tuesday night.

Both WSB radio and TV, as of 9:20 p.m., featured local stories telling only of Coverdell's earlier surgery and, under national headlines, a link to a story about his death. Neither WAGA's www.fox5atlanta.com nor www.wgst.com had news of his passing.

WXIA's www.11alive.com had a story on his death as did www.cbsatlanta.com, WGCL's Web site.

Political reporter Bill Shipp's Web site, www.billshipp.com, contained a solemn update box with this message: GEORGIA SENIOR SENATOR PAUL COVERDELL IS DEAD AT 61.

The senator's own Web site, www.senate.gov/coverdell/, had not been changed to reflect his passing.

The initial flip-flop on Coverdell's death might have sounded familiar to some.

In June 1988, U.S. Rep. Bob Stump (R-Ariz.) told colleagues: "Mr. Speaker, I have the sad responsibility to tell you this afternoon that Bob Hope passed away. We will all miss him very much." The story was picked up briefly before being retracted. Hope, 97, recently returned home after an extended hospital stay.

Baseball great Joe DiMaggio also was proclaimed dead in January 1999, three months before he died. NBC ran a "crawl" across the bottom of a program announcing DiMaggio was dead. In fact, he was watching the program with his friend and lawyer, Morris Engelberg, who later said he told the baseball legend, "Joe, we must be in heaven together."

NBC ran another crawl about 20 minutes later, saying its previous report was inaccurate. The network later said a technician in the New York control room inadvertently sent the item and subsequently apologized to DiMaggio.

--- Staff Writer Padtricia Guthrie contributed to this report.

CORRECTION-DATE: July 20, 2000

CORRECTION:

Page A/2: The year when an erroneous announcement of Bob Hope's death was made in Congress was wrong in a Wednesday news article. It was in June 1998.

GRAPHIC: Photo

Beth Galvin (second from left), a news reporter for WAGA, is among the throng of media around Piedmont Hospital after the death of Sen. Paul Coverdell was confirmed Tuesday evening. / CATHY SEITH / Staff

LOAD-DATE: July 21, 2000

APPENDIX B

The Atlanta Journal-Constitution

@issue

3 PAGES DAILY OF DEBATE AND DISCUSSION

Page one

Eyes on a jackpot: The legal system needs provisions that discourage frivolous lawsuits against doctors.

Page two

Editorial: Gov. Sonny Perdue is long on passion but short on specifics about how he'll get Georgia to "take flight."

Page three

Man vs. tree: It's chain saw to the rescue when the yard of a home in Tucker becomes a battlefield.

No way that Bush can be both uniter and divider

Pity President Bush's able speechwriters as they craft tonight's State of the Union address. You can be sure they will come up with fine words and eloquent phrases. What they cannot do is resolve the central contradiction of the Bush presidency.

George W. Bush has a choice. He can be a commanding and unifying leader who rallies the country behind the war on terrorism and major foreign policy endeavors. Or he can be a partisan and ideological leader who tries to transform domestic policy and politics. He cannot succeed at both. Yet Bush is certain he can.



E.J. DIONNE

is a Washington Post columnist. His column appears occasionally.

Politically, he wants to use the authority he gained after Sept. 11 to achieve a historic realignment to the benefit of the Republican Party. If that means using war and domestic security to batter the Democrats in the midterm congressional elections, so be it.

Domestically, he is pursuing a more ambitious conservative agenda than Ronald Reagan ever did. Bush is determined to do two things: First, tilt the tax code toward the interests of the well-off — or, as Bush would see it, toward investors and entrepreneurs; and, second, create a long-term hole in the federal budget that will, over time, force deep cuts in domestic programs.

If Bush wanted an economic "stimulus" plan that would shower the maximum benefits on the smallest number of the most financially comfortable Americans, he could hardly have done better than his proposal to eliminate the taxation of most dividends.

And Bush would reorder the world. While cutting taxes, he's increasing military spending to bolster America's fighting forces. He wants to go to war with Iraq not only to rid Saddam Hussein of his dangerous weapons (and rid Iraq and the world of Hussein) but also to rearrange Middle East politics.

Conservatives are ecstatic over Bush's boldness. They praise him for betting the farm on the midterm elections and



ERIC DRAPER / Knight Ridder Tribune
President Bush works on tonight's State of the Union address.

winning. They are pleasantly astonished at the ambition of Bush's tax proposals. They cheer his unapologetic swagger, embodied in down-home declarations such as the recent scoffing at the idea of giving U.N. weapons inspectors more time in Iraq: "This looks like a rerun of a bad movie, and I'm not interested in watching it." And the more the wimpy Europeans complain — especially those irritatingly unreliable French — the more certain Bush's supporters are that he's on the right track.

There is only one problem with all this: It's not working.

The 2½ months since the GOP's historic triumph in the midterm elections have been the most troubled of Bush's post-Sept. 11 presidency. The polls offer one measure: Support for Bush's Iraq strategy is heading south.

The Washington Post-ABC News Poll released last week found that only 50 percent of Americans approved of Bush's handling of "the situation with Iraq and Saddam Hussein," down from 58 percent a month ago. And on the domestic side, only 43 percent approved of his handling of the economy, a 7 percent drop since December and the lowest grade of his presidency.

To understand what the president has decided to throw away, it's worth recalling the depth of bipartisan unity that existed in the months after Sept. 11. I'll never forget calling a Democratic political consultant in the week after the attack and asking him his thoughts on Bush. This highly partisan Democrat

replied: "I actually went into church and knelt down and prayed that he'd be successful."

Republicans, for their part, were not the least reluctant to blame the attacks on Bill Clinton, who had been out of office for eight months. But Democrats held their tongues for months.

Democratic bitterness is directly related to the sense of many in the party that they were played for suckers, especially in last year's elections.

Sen. Dick Durbin of Illinois says that he and many fellow Democrats are still incensed that Bush and his party went after then-Sen. Max Cleland of Georgia for allegedly being soft on homeland security. Cleland's offense against the safety of the nation? He supported civil service protections that Bush opposed within the new Homeland Security Department.

Louisiana Sen. Mary Landrieu poured a little extra Tabasco on her comments about Cleland's defeat: "He left three limbs in Vietnam. He's already served his country in more ways than any of us ever will. The president came in with a very personal and very vicious attack, using the homeland security issue to unseat a man who fought on the Armed Services Committee to give the guys in the battlefield everything they need. It didn't mean a thing to this president."

Bush will go into a war with Iraq, if it happens, with far shallower support than his father had 12 years ago, despite the closely split congressional vote on the first Iraq war. Having used security issues for purely partisan purposes, this President Bush has diminished his ability to ask for support on purely patriotic grounds. He

has no political net beneath him if something goes wrong. And by using his popularity on foreign affairs to push for domestic policies that Democrats genuinely despise, he has made those in the opposition who actually support his objectives abroad look like chumps.

That's the problem the president needs to confront in his State of the Union address today. You wonder if he'll even try.

OUR WEEKLY COLUMNIST LINEUP:

- Sunday: Thomas Friedman, George Will
- Monday: Molly Ivins, William Safire
- Wednesday: Thomas Friedman, Leonard Pitts
- Thursday: William Safire
- Friday: Bill O'Reilly

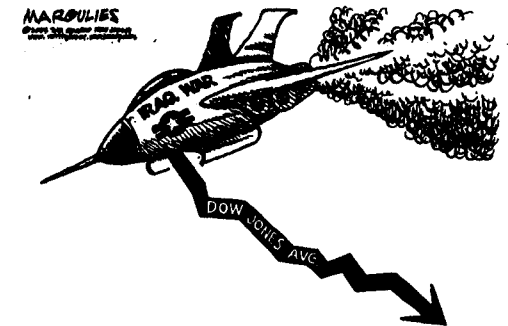
ON AJC.COM

"The presentation of marriage as meal ticket seems quaintly anachronistic."

Los Angeles writer Jennifer Grossman on why the television show "Joe Millionaire" doesn't reflect reality for today's young women.

TODAY'S CARTOONS

JIMMY MARGULIES / North America Syndicate



KIRK WALTERS / North America Syndicate



DICK WRIGHT / Columbus Dispatch



Declare halt to open season on doctors

By DAVID PERLMUTTER

I'm disconcerted that new friends of mine are not surprised to learn that I have brain damage. They simply nod and assume a "That explains a lot" look.

What really astonishes them, however, is that I'm not rich because of my condition. That's because I chose not to enter the medical lawsuit lottery that is crippling our health care system.

As Congress once again takes up tort reform, my case should be an example of why we need to revise the system to one that helps victims of real medical malfeasance but that also allows doctors to perform their difficult and complex work without a

financial and litigious gun to their head.

As a graduate student, I participated in a university clinical trial of a psychiatric drug. It seemed simple: Take pills under supervision, undergo examinations and earn cash. As I recall, I was fussing with a logic puzzle in the lab when the room became blurry and I woke up with several hours of my life missing. Hospital tests followed.

One, the electroencephalograph, showed that I had something abnormal — probably a lesion — on my brain. I

considered calling a lawyer. And why not? I was hurt by some big drug company's product and some large university's experimentation on a human guinea pig — poor me.

But something in my brain said "Wait," and it wasn't the damage talking. I took further tests that proved the abnormality to be tiny, healed and not in any dangerous spot. I suffered no seizures. I perceived — and others reassured me in this — no mental dysfunctions besides my usual ones.

Then too was the inconvenient fact that I had been warned about possible side effects in the drug trial forms I signed. (I had not read them, of course.) And no one could certify that my brain lesion or scar was not an old one.

Yet law student friends assured me that I had a case. Or, as one put it, "They'll settle and you can get a new car out of them at least."

My nagging conscience, however, was my jury. I wasn't convinced that the drug company or the university was guilty of anything terrible, and I wasn't in pain, or injured, or suffering in any way I could measure. I just didn't think it was right or fair to sue.

Some people laugh at me when I tell them this story. "Everybody sues," they exclaim. "Why not you?"

Well, because that's the problem. According to a study by A.M. Best, physicians spent \$6.3 billion in malpractice premiums in 2001. States such as West

Virginia, Pennsylvania and Mississippi have trouble persuading anyone to start or continue practicing medicine: insurance costs too high, the days in court too frequent. Also, a recent survey of physicians by Harris Interactive found a majority ordering more tests, more referrals, more drugs than clinically necessary to protect against liability claims.

So everybody's bills go up. In Florida, birth mothers are charged an extra \$4,000 just to pay their share of the obstetrician's insurance costs.

That's why sensible tort reform should be a bipartisan issue. We should put caps on lawyer fees, enact a system of fines for frivolous lawsuits, allow payments only to people who have actually undergone proven loss or injury and create federal arbitration panels.

We should also try to reinstall reason into the process. The university that conducted the clinical trial in which I participated paid all my medical bills. That was reasonable. I didn't try to get rich off them; that was reasonable, too. Judges and juries should weigh what is fair and equitable in each case but also think of what the system will bear.

Of course, I sometimes regret not trying for the medical lawsuit jackpot. But every time I hear about a physician quitting the business or the rising costs of medical care, I think we would all be better off if more people were as dumb as I am.



David Perlmutter is an associate professor of mass communications at Louisiana State University.

Endangered Species Act hasn't worked

By LAURA E. HUGGINS

The fate of many endangered species is in the hands of private property owners. By maintaining habitat for rare species, landholders are providing a public service, and the best way to encourage landholders to protect these species is to ensure that they are compensated rather than penalized for this service.

The Endangered Species Act, passed by Congress and signed by President Nixon in 1973, established lists of endangered and threatened species and prohibited the killing or harming of them and their habitat.

Measured by any reasonable standard, the ESA has failed. In the last three decades many more species have been added to the list than have been removed. Even if we count the species removed from the list as "successes," they account for only 3.5 percent of the species recorded since 1973. According to the General Accounting Office, most species are closer to extinction now than when they were originally listed.

The first step toward reforming the ESA should be to moderate the damage that the act inflicts on private landowners. Nearly 80 percent of listed species depend on private land for all or part of their habitat requirements.

Yet if landholders provide suitable habitat for an endangered species, they run the risk of their property being subject to severe government regulations, many of which constrain land from being used profitably.

An unintended consequence of the ESA is that it effectively creates perverse incentives for landowners to destroy species and their habitat.

Some environmental leaders recognize the problem. Michael Bean, an Environmental Defense Fund attorney who is often credited with authorship of the ESA, acknowledged that there is "increasing evidence that at least some private landowners are actively managing their land so as to avoid potential endangered species problems." He emphasized that these actions are "not the result of malice toward the environment" but "fairly rational decisions, motivated by a desire to avoid potentially significant economic constraints."

For instance, as the golden-cheeked warbler was about to be added to the endangered species list, a firm that owned hundreds of acres of warbler habitat hired workers to chain-saw the entire stand of oak and juniper trees.

For wildlife conservation to be successful, negative restrictions on landowners must be replaced with positive incentives, such as those in Texas' Landowner Incentive Program.

Landholders voluntarily enter into a contract to perform measurable actions (such as restoring native vegetation or performing controlled burns) with the Texas Parks and Wildlife Department.

Biologists are allowed on the property to monitor progress, and landowners are paid on the basis of meeting the contract's objectives. Grants of up to \$10,000 are available to property owners.

As Aldo Leopold explained nearly 70 years ago, "Conservation will ultimately boil down to rewarding the private landowner who conserves the public interest."

Laura E. Huggins is a research fellow at the Hoover Institution.

Cases of pre-emptive habitat destruction have become notorious.

The Atlanta Journal-Constitution @issue

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OUR OPINIONS

Perdue's promises lofty, but details remain grounded

In his first State of the State speech Monday night, Gov. Sonny Perdue compared Georgia to a plane that was lifting off in "uncertain weather" and "short on fuel," and cast himself as the new pilot just taking the controls.

The metaphor was apt, but afterward, those in his audience might have stretched the comparison further, noting that on many issues this new pilot has yet to file a detailed flight plan, or even tell us what destination he has in mind.

Part of that's understandable. As Georgia's first Republican governor in 130 years, Perdue is still learning the job. Not surprisingly, he was strongest when he talked about the two areas in which he has made his commitments clear, child welfare and ethics reforms.

Even in a squeaky-tight budget, the governor has proposed \$52 million in new state funding for Georgia's troubled child-welfare system over the next 18 months, a sign of the admirable sincerity of his concern for the 14,000 abused and neglected children in state custody.

He was also convincing in his embrace of a much tougher ethics law in Georgia, which he said was needed to rebuild trust in government. The details of his long-awaited ethics reform package won't be revealed until today, though, and the real test will be how hard Perdue fights for its passage in a Legislature still bound to the old ways of operating.

In a related matter, Perdue stressed his intention to redraw the state's political maps and to take politics out of the process as much as possible. If the governor is genuine in that claim — if it is more than just rhetoric — he should follow the lead of Iowa, which allows a nonpartisan Legislative Services Bureau to draw districts based solely on nonpartisan criteria such as population equality, contiguity, unity of counties and cities, and compactness.

Perdue also repeated his promise for a

statewide referendum to help decide the state flag, a step that he described in unlikely terms as part of Georgia's "healing process." The governor could help considerably in that healing by embracing a flag other than the Confederate battle emblem, but so far he has chosen to stay out of harm's way, declining to take any stance at all.

The new governor also indulged in some budgetary razzle-dazzle that could come back to haunt the state. On Jan. 15, after he announced that he would have to roll back a \$10,000 property-tax exemption to balance the budget, Perdue was criticized for advocating what amounted to a tax increase. Now he claims to have found a way to "permatize" the tax break.

By pushing back the date for state payroll checks from June 30 to July 1, Perdue intends to push that cost off into the next fiscal year, thus "freeing" \$200 million this year. It also means that the state begins 2004 in the hole by \$200 million, but Perdue says he'll recover that money through additional cuts or new revenues.

To pay for the exemption, he'll also have to siphon \$85 million from midyear education spending.

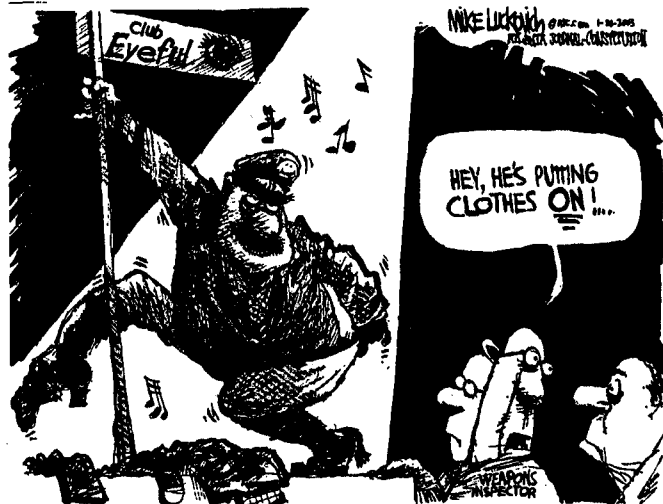
On environmental issues, Perdue made repeated references to the majestic views of Georgia's rivers and hills from his pilot's seat. But on those and other issues he never came down to earth, offering little detail on how he intends to manage those resources. Yes, it is wise to sit down personally with the governors of Alabama and Florida to try to solve the water conflict among the three states, but that's only one of many steps needed to resolve the state's water-planning crisis.

In the end, Perdue left Georgians with the impression of a man undoubtedly well-intentioned, and also a little abashed at the difficult situation he has inherited. But maybe that's to be expected from a pilot on his maiden flight.

Even in a squeaky-tight budget, the governor has proposed \$52 million in new state funding for Georgia's troubled child-welfare system over the next 18 months.

MIKE LUCKOVICH

Mike Luckovich's cartoon appears Tuesday through Friday, and Sunday



READERS RESPOND



JOHN SPINK / Staff

Pedestrians walk along the tree-lined west side of Peachtree Road. Atlanta's reputation as a dangerous place for walkers is well-known.

Sidewalks

Responses to "DOT to look at risks, benefits of tree-lined sidewalks," **Metro**, Jan. 27

Incentive to walk

The story on roadside trees was cast as a conflict between driver safety and pedestrian safety. Fair enough.

But a third factor may have even greater public health significance: walkability. Tree-lined sidewalks are attractive. People want to walk on them. And at a time when too many of us are sedentary and obesity is epidemic (causing diabetes, heart disease and other afflictions), we need all the incentives to walk that we can muster.

The Department of Transportation must take this into account as it considers allowing roadside trees. Good sidewalks are good public health.

DR. HOWARD FRUMKIN
Frumkin, of Atlanta, chairs the department of environmental and occupational health at Emory University's Rollins School of Public Health.

Don't stack deck against pedestrians

The Department of Transportation considers it too dangerous to have rigid objects such as shade trees within 8 feet of the curb, but soft objects such as pedestrians are just fine.

The agency is applying rural interstate highway standards to city streets. This is totally inappropriate and creates a city that is mean and ugly.

JOHN WETMORE

Wetmore, of Bethesda, Md., is the producer of the cable TV program "Perils for Pedestrians."

Room for drivers

Atlantans should thank the DOT's David Studstill for clarifying the misconception that sidewalks are designated pedestrian zones constructed to allow walkers safe passage. Rather, they are "auto recovery zones" where inattentive, incompetent or intoxicated drivers might regain control of their vehicles.

TERESA FREY
Stockbridge

Fair Lending Act

Provisions will make difference

Concerning the provisions of the Fair Lending Act, the Atlanta Journal-Constitution's editorial board says don't worry about it ("Lenders' overstated claims shouldn't doom new law," @issue, Jan. 27).

Standard & Poor's says it will not rate mortgage-backed securities transactions that contain mortgages that might violate the provisions of this act.

Whose opinion will have a greater effect on Georgians trying to secure loans for less than \$322,700?

MICHAEL NORTON
Lilburn

Don't abandon privatization idea

Some lessons are learned most effectively in the negative. From its experience with United Water, for example, the city of Atlanta has learned how *not* to privatize services.

However, that doesn't mean the city should never try privatization again. There are many services private companies can perform better and less expensively. But it does mean the city should do a better job of setting up the deal the next time — leaving politics out of it.

The United Water experiment was a failure chiefly because neither the city nor the company did a competent job of researching the requirements. Former Mayor Bill Campbell pushed for a quick privatization contract to use as a re-election issue; he was trying to fend off critics who claimed City Hall was not run efficiently. He put precious little effort into making the deal work.

United Water believed the city's unrealistically low cost estimates for running a water system that turned out to be crumbling from age and improper maintenance. For its part, Atlanta had done too little research to know what it could reasonably expect in savings from a private company. So the \$21-million-per-year, 20-year contract was too long, too vague and based on bogus cost estimates.

The good news is that the city didn't pay millions to get out of the contract — thanks, in large part, to City Council member Clair



BEN GRAY / Staff

Atlanta Mayor Shirley Franklin and Michael Chessner, chairman and CEO of United Water, walk to a news conference, where it was announced that the city and United Water were dissolving their contract.

Muller, who insisted that a "termination for cause" clause be inserted in the rushed-through contract. But Mayor Shirley Franklin, who pulled the plug on United Water, will have her hands full getting the water system back under city management.

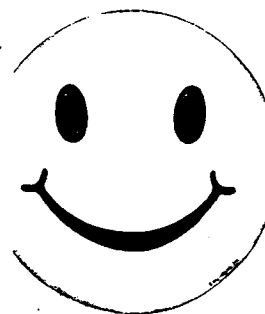
Will she try another private contract? Not for running the entire water system, she says. "The water system was just too big and too essential," said Franklin after she and United Water parted company last week. "Could the collections part of the water system be privatized? Probably."

Franklin commissioned benchmark studies last year on every city department. One conclusion reached by the consultants was that "marketization," or the competitive bidding of city services, could be a way to improve the city's work and save money. That might still apply to parts of garbage collection, vehicle maintenance, payroll and other services.

Thanks to its experience with the United Water deal, the city understands that privatization contracts must include clearly defined and specific expectations, that they should not be 20 years in length and that they should have specific oversight provisions.

The lesson the city learned from United Water is tough but valuable. City Hall should put that experience to good use.

► **EQUAL TIME:** For another perspective on this issue, see the next page, A13



Everyone's skin is just too thin

Is there anything in this world that doesn't offend *somebody*? Just name it — from the state flag right down to french fries, first-degree whiners and complainers have taken over.

What to do? *Have a nice day* (and I'm sick of that one!)

CATHERINE B. SHEALY
Atlanta

Ezzard employs flawed reasoning

In Martha Ezzard's column ("Thomasville could teach Bush a thing," @issue, Jan. 21), she hoists herself with her own petard not once but twice.

First, if what she says is true — that most of Thomasville's black high school grads get "vocational" endorsements — how can they possibly succeed in college without having completed college prep courses? Is it in their best interest to give them an advantage, then put them into an almost-certain fail situation?

Second, she says admitting the top 10 percent of students of all high schools (the so-called Texas plan) "unfairly discriminates . . ." If that college admission method discriminates against a cross-section of students below the top 10 percent, how much more does a plan favoring race discriminate against students who are not black, Hispanic or American Indian?

GARY B. HULSEY
Dunwoody

Opponents show law's worthwhile

Just in time to help me decide whether the Georgia Fair Lending Act is a good or bad law, Harold Cunliffe of the Greater Atlanta Home Builders Association, in his Equal Time column, clears up all my concerns ("Fair lending legislation has unintended fallout," @issue, Jan. 27).

We all know the Greater Atlanta Home Builders Association, don't we? These are the people who are against having builders licensed by the state, against tree protection laws, against effective environmental protection laws and against impact fees that would require builders to pay for the infrastructure to support the houses they build.

If that group is against the GFLA, then it must be a good law.

PHIL COUCH
Douglasville

MARTA ad campaign needs to keep it real

So with its new \$1 million ad campaign, MARTA will be everywhere, huh? Actually, the ads will be everywhere, not the buses and trains.

I've got the perfect ad slogan that reflects the MARTA we regular riders all know: "We are experiencing delays on the north-south and east-west lines."

For good measure, we could put this in small print: "We'll have another train at this station as soon as we can find one with doors that open and close. In the meantime, please avoid the escalators and urine-soaked elevators that never work, and don't worry about paying your fare. The turnstiles don't work, either. Have a nice day, and thanks for riding MARTA."

ROY SOBELSON
Chamble

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@issue

MORE INFORMATION AND OPINIONS ON TODAY'S TOPICS: An opinion column today discusses the Endangered Species Act. To learn more:

► ONLINE:

U.S. Fish & Wildlife Preserve:
endangered.fws.gov/esa.html
www.nceet.snre.umich.edu/EndSp/Endangered.html



► BOOKS:
"Fate of the Wild: The Endangered Species Act and the Future of Biodiversity," by Bonnie B. Burgess

Cut this tree killer some slack

By **ROBERT REDMOND**

I have always loved trees collectively, and I still do. I have a confession to make, however, that will probably make certified tree lovers hate me.

I have killed trees.

To understand my defense of my crime, you should have a map of the home we bought when our children were small. The yard of that home in a subdivision in Tucker is one I now think of as the battlefield.

Our yard contained many large, old trees. Three were big pines. One huge one was only 6 feet behind the house. It had almost no greenery except at the very top, some 80 feet high. A very large, and quite dead, tulip poplar stood in the center of our back yard, right by a 24-foot, above-ground swimming pool that came with the house. About 15 feet away was a tall pine and a surprisingly tall persimmon tree.



Robert Redmond of Tucker is a retired federal government manager.

Between our house and our neighbors on the west side was another tall pine, about 8 feet from each house. On the other side of our backyard was a big, old maple tree, which periodically sent little seeds like helicopters spinning down into the swimming

pool. Our neighbors on both sides also had large trees that partially overhung into our yard.

In the front yard, we had a 70-foot tall hickory tree, a 50-foot sweet gum and an 80-foot sycamore

in a row across the front of the house. About 6 feet on the other side of the driveway was another 40-foot tall persimmon tree. A few feet away, fighting for space, were two dogwoods, one of which overhung the garage roof.

My battle with the trees began when my daughter stepped on a yellow jacket and had an allergic reaction. The persimmon trees were dropping lots of fruit, which made yellow jackets swarm and crawl around on the ground. I would come home from work, pick up fruit and kill yellow jackets. So the persimmon trees came crashing down to the annoying buzz of a chain saw.

A huge limb, more like one fork of the trunk, from the dead tulip poplar crashed down on the roof of the garage just as I got home from work one day. It punched a big hole in the roof and knocked off some wood trim. The chain saw buzzed again.

Over the years I spent many hours several days a week picking up assorted tree-produced debris in the front yard. The hickory tree dropped so many nuts that the yard was practically paved in them at times.

Little twigs and sizable limbs rained fairly constantly from the trio of trees in front of the house. The

flower beds were always full of twigs and leaves, especially in the fall, but really year-round. I would have to rake out the pine straw with the leaves and twigs. It seemed at times that I lived on a ladder. The big sycamore also seemed to enjoy raining large chunks of bark across the front lawn most of the year. I usually picked up sticks and bark before mowing the grass.

I fought the good fight, but now I am getting older. I need a more maintenance-free home. We had vinyl siding installed over all the wood trim on the house, and that's when I committed the real crime. I had the three trees in front cut down and hauled off. It turned out that two of them were hollow, and the big sycamore was so brittle from the drought that the tree cutter said the limbs just broke off when he started to cut them. He said I was lucky I hadn't had a limb fall on my head. That tree would have done that, too.

It took me three days to clean up the wood chips left by the stump grinder. Now I have to re-establish my lawn and flower beds, but I have cleaned the front gutters for the last time.

That is my defense. Hang me for it if you will. I will die rested and relieved.



File

Bush, heed the wisdom of wartime presidents

"My message today was a message of death for our young men. How strange it seems to applaud that."

— Woodrow Wilson to his personal secretary Joseph Tumulty, April 2, 1917, after his war message to Congress.

Unlike Wilson on that day in 1917, President Bush won't declare war in his State of the Union speech tonight. But sending Americans into battle is the most serious action a president can ever take. Bush could learn some timeless lessons from the speeches of other American presidents who have faced war decisions.

War lesson one: Offer proof certain of a direct threat.

While Bush tends to delineate his own moral parameters, other wartime presidents reflected the views of the American people and our allies. And most produced proof that the United States faced a dangerous threat.

In his State of the Union speech 105 years ago, William McKinley credited the American people with restraint and justice after the battleship Maine was sunk in Havana Harbor: "It is striking evidence of the steady good sense distinguishing our national character that this shocking blow did not move a generous people to instant, desperate resolve." Though modern historians dispute whether Spanish agents blew up the Maine, McKinley awaited the results of an investigation claiming such before entering the war for Cuban independence.

Before John F. Kennedy's Oct. 22, 1962, Cuban missile crisis speech to the American people, Adlai Stevenson, U.S. ambassador to the United Nations, publicly confronted the Soviet ambassador with dramatic photographs of Soviet missiles in Cuba.

Though Bush claims America cannot wait for another terrorist strike, he has produced no Stevenson moment to connect Iraq to Sept. 11 or the al-Qaida network.

War lesson two: America can win a war, but not the peace, without international support.

"If I read the temper of our people correctly, we now realize as we have never realized before our interdependence on each other," Franklin Delano Roosevelt said in 1933.

But the strongest thread of



MARTHA EZZARD
mezzard@ajc.com

Roosevelt's most famous State of the Union speech, given Jan. 6, 1941, is seen by Bush supporters as consistent with this president's philosophy. Said Roosevelt, "As long as aggressor nations maintain the offensive, they, not we, will choose the time and the place and the method of their attack."

Those words were uttered just 11 months before Pearl Harbor.

Roosevelt's envisioned "world order," though, had little relationship to Bush unilateralism.

"The world order which we seek is the cooperation of free countries, working together in a friendly, civilized society," Roosevelt told the nation before World War II.

While Bush amasses American troops in the Middle East for a possible war with Iraq, he faces opposition from France, Germany, Russia, China and even Canada.

War lesson three: War is not always the road to re-election.

While no one doubts American military prowess, as antiwar protests around the country gather momentum, the words of one wartime president, who lost his place in history over the nation's most divisive war, are haunting:

"We often say how impressive power is. But I do not find it impressive at all. The guns and the bombs and the rockets and warships are all symbols of human failure. A dam built across a great river is impressive. . . . A rich harvest in a hungry land is impressive. The sight of healthy children in a classroom is impressive. These, not mighty arms, are the achievements the American nation believes to be impressive."

Lyndon Johnson spoke those words on April 7, 1965, announcing the deployment of another 50,000 American soldiers to Vietnam. By 1968, the war had so debilitated his presidency that he announced he would not seek re-election.

The lesson of the Johnson presidency could easily become the lesson of the Bush presidency.

Martha Ezzard's column appears Tuesdays.

EQUAL TIME

This column is published to provide another viewpoint to an AJC editorial published today. To respond to an AJC editorial, contact David Beasley at dbeasley@ajc.com or call 404-526-7371. Responses should be no longer than 600 words. Not all responses can be published. Published responses may be republished and made available in the AJC or other databases and electronic formats.

Privatization of services expensive and ineffective

By CHARLIE FLEMMING

In 1996, a ValuJet DC-9 crashed into the Florida Everglades, killing all 110 people on board. The Federal Aviation Administration eventually determined that oxygen generators improperly loaded by the airline's maintenance contractor caused that fatal explosion. ValuJet had chosen an outside contractor for that job because it didn't want to expand its own operations; the cost of contracting with an outside firm, it believed, would be lower than doing the work in-house.



Charlie Flemming is president of the Atlanta Labor Council of the AFL-CIO.

As it turns out, of course, the cost of its contractor's negligence was high indeed.

The ValuJet crash is the ultimate outsourcing horror story. It is one that we should remember as Atlanta reconsiders how to manage its water after severing its contract with United Water.

ValuJet's decision to outsource its maintenance operations involved many of the same issues faced by public agencies considering a switch to private contractors. How are costs best measured? What happens down the road, once an agency can no longer do the work and is dependent on an outside contractor? How can accountability be maintained?

As state and local governments have increasingly experimented with contracting out, the benefits of private delivery of public services have proved elusive. And now, more than ever, when government is on the front line in homeland security, the nation has come to understand the importance of an experienced, dedicated public-

E-MAIL FORUM

Should Atlanta's water service be privatized? Send your e-mail to issue@ajc.com, where it will be posted online. Please include full name, city or county of residence and daytime phone. (Phone numbers will not be published.)

sector work force and the shortcomings of privatization.

Organized labor has always maintained that contracting out often results in higher costs, poorer quality of service, increased opportunities for corruption and diminished government flexibility, control and accountability. In addition, women and minorities are disproportionately harmed because they rely on government employment as a means to economic and social advancement.

The local economy and tax base may suffer as relatively good-paying jobs with benefits are replaced with low-wage, no-benefit jobs provided by companies that may be located in another part of the country or even overseas.

Organized labor believes that public managers should explore alternatives to contracting out. Service improvements and innovation can be accomplished by front-line workers and managers working together in partnership.

With committed managers and elected officials who recognize that workers are a valuable resource — a pool of talent, energy and experience — delivery of services can be improved without introducing the risks of contracting out. Various public jurisdictions have experienced the benefits of management and labor working together to improve services.

There are many examples where management and labor have joined together and come up with solutions that cut costs and saved jobs.

New Attitudes will return next week.

Governor makes case in kitchen

Georgians were introduced Monday to the governor they chose almost three months ago.

It was the kitchen-table conversation Gov. Sonny Perdue needed to have — set up in early afternoon by the announcement that he and legislative leaders will find budget cuts over the next 18 months to make a \$10,000 homestead exemption permanent.

Homeowners reacted predictably to the governor's revelation in his budget address last week that because the surplus has disappeared, next year's homestead exemption



JIM WOOTEN
jwooten@ajc.com

would drop to \$4,000. Politicians, many of whom had signed no-tax-increase pledges, caught both barrels from taxpayers at the prospect of higher property levies.

"The property tax is the most unpopular tax in the state of Georgia," said state Rep. Richard Royal (D-Camilla), chairman of the tax-writing House Ways and Means Committee. "I don't think there was a chance in the House" that the reduction would have stood, he said.

Rep. Tom Buck (D-Columbus), chairman of the House Appropriations Committee, said he had gotten an unusually high 50-60 calls from constituents who were opposed to the proposal.

Senate President Pro Tem Eric Johnson (R-Savannah) said the consensus that the tax break for homeowners should be preserved has changed the momentum in the General Assembly. The majority of legislators now are looking for ways to cut. "There will be zero pork coming out of the Senate," he promised.

When Perdue announced that the tax break for homeowners would be preserved, he noted that moving a \$200 million state payroll one day, from one fiscal year to the next, buys time.

"Our goal is to find permanent efficiencies in state government," said Perdue. The additional year will allow time for in-depth examination of state spending, function by function.

By making the \$10,000 exemption permanent and building it into the budget so that it is not "dependent on the whim of surpluses in the economy," Perdue said no future governor would take office and "have to deal with the illusion of a tax cut funded by funny money."

While Monday afternoon's news resonated in the pocketbook, his State of the State address Monday evening soared — and not because of the pilot-in-flight metaphor.

Perdue has badly needed to have a kitchen-table conversation with Georgians. This was it. Even with a bad economy, it needed to be upbeat, optimistic, confident — a vision of a people who, as he said, "can overcome any challenge we face."

Republicans are often stereotyped, usually by those who don't wish them well, as mean-spirited penny-pinchers frightened by diversity and intolerant of change. For that reason, Perdue, as the first Republican governor in 130 years, needed to paint a picture of the Georgia he sees. He did it beautifully and inclusively:

"A growing population has brought many changes to our state. But whether they were born in New York or New Delhi, people choose to become Georgians because of those things about our state that will never change."

Those are, he said, Georgia's core values, "the way we stick together when times are tough and look out for each other when danger threatens."

The state's greatness, he said, is in the optimism, the patriotism, the enterprise and the compassion Georgians feel for one another. It is the view of a cheerful, optimistic leader — not somebody uncomfortable with change or the challenges Georgia faces.

Perdue needed to tell us who he is, what he stands for and what he intends to do with this state and this government. He did all of that — and backed off a tax increase to boot. It's a fine way to start the week.

Jim Wooten is the associate editorial page editor. His column appears Tuesday, Friday and Sunday.



MORE INFORMATION AND OPINIONS ON TODAY'S TOPICS: An opinion column today discusses genetic engineering. To learn more:

► ONLINE:

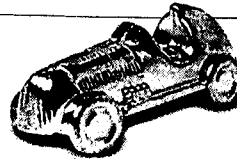
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► BOOKS:
"Remaking Eden:
How Genetic
Engineering and
Cloning Will
Transform the
American Family,"
By Lee M. Silver

EQUAL TIME

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Moving up without apology

By MICHAEL G. FRANC

In a national poll conducted for Time and CNN shortly before the 2000 election, respondents were asked whether they considered themselves among the wealthiest 1 percent of all Americans.



Michael G. Franc is vice president for government relations at the Heritage Foundation.

Purveyors of class warfare must have been despondent to learn — and President Bush would do well to remember — that 19 percent believed they earned enough to qualify for that exalted status. Another 20 percent told the pollsters that they fully expected to enter the ranks of the wealthiest 1 percent in the near future.

Imagine: Two in five Americans hear the heated rhetoric about the "wealthiest 1 percent" and take it

as a personal affront!

This optimism is not "irrational exuberance." Glenn Hubbard, chairman of the President's Council of Economic Advisers, points to studies that confirm the enormous upward economic mobility in American society. Over a 10-year period, Hubbard notes, 66 percent of low-wage earners earn enough to move to a higher bracket.

The president speaks to the aspiring millionaires among us when he describes how ending the double taxation of dividends will boost the value of our 401(k)s and how lower marginal tax rates will benefit everyone.

He should be unapologetic when he explains how workers could use private retirement accounts, carved from a portion of their Social Security taxes, to secure their futures and pass along a nest egg to their children.

He should burst with pride when he tells us how tax credits for uninsured workers to purchase health coverage would end their

exposure to the devastating financial consequences of uninsured medical catastrophes and allow them to build future wealth.

He should let his emotions betray his passion when he explains how meaningful forms of educational choice would allow parents who are frustrated with failing and dangerous public schools to save their children by moving them to successful schools.

If Bush seizes the mantle of Reaganesque optimism, his ambitious domestic agenda will prevail.



Hasbro

Vehicle insurance database may do more harm than good

By BONNIE ASH

I was one of the thousands who received a letter from the Georgia Department of Motor Vehicles stating that our family car isn't registered in the new Georgia Electronic Insurance Compliance System database.

GEICS (I call it "geeks") is a new system that goes into effect Feb. 1 — this Saturday — that will allow police on the spot to verify via computer the status of auto insurance.

The intent of the law was good — register all insured cars in a central database to cut down on the number of uninsured drivers, estimated to be about 15 percent of Georgia drivers.

Cars must be registered in the database effective Saturday. An insurance card will no longer be valid proof of insurance. If a car is not in the new database, tag renewal will be blocked and drivers can be cited and arrested.

Sound great? It's not, if my experience is common.

I have insurance, and it's current. I don't even have any points on my driving record. But I'm not in the database.

As we Georgia motorists have been told to do, I checked my vehicle ID number, or VIN, on my registration, my insurance card and my car dash. Everything is in order.

Calls, e-mails and letters to my agent and insurance agency assured me they had submitted the correct

information three times in January alone. Still my county tag agent says [six times] that the computer reads "unknown insurance status." This is followed by "call your insurance agent."

Online, the DMVS (www.dmv.ga.gov) referred me to the Consumer Insurance Advocate (www.insuranceadvocate.org) for help. That Web site warned that if your insurance information isn't in the GEICS system, you can be fined and arrested. The people at the insurance advocate's office were great and supportive, but, alas, said their hands were tied and could do nothing to help. They referred me to the Insurance Commissioner's Office, who informed it was not in their jurisdiction and said to start

again at the DMVS.

There, I was given no fewer than six phone numbers, which led me into phone menus transferring me to busy signals and disconnects while I was accruing long-distance charges. My earlier correspondence has gone unanswered.

Now whom can I turn to?

Since receiving the letter on Jan. 2, I've worked feverishly to remedy the problem. I am left to worry about the random stop for license, insurance, registration and seat belts knowing that under the new law, I can end up sitting in jail, and my kids in state care, while bureaucrats once again hand me off and the blame along with it.

Bonnie Ash, of Arnoldsville, is a wife and stay-at-home mother of two.

Pulling plug on water deal a mistake

By GEOFFREY F. SEGAL

Atlanta residents probably will be paying more for their water soon. And long after Mayor Shirley Franklin leaves office, they will continue to pay for her questionable decision to



Geoffrey F. Segal is the director of government reform at the Reason Foundation of Los Angeles and an adjunct scholar at Georgia Public Policy Foundation.

terminate the city's relationship with United Water.

After nixing its deal with United, the city is scrambling to put together a transition plan. Sewer rates have tripled over the past 10 years, but water rates for Atlanta residents have increased only about 10 percent.

Atlanta is also facing a \$3 billion sewer improvement plan. To deal with the

increased costs, the city may have to raise rates. And those increases may be bigger than we think.

The privatization deal was the largest in the country. United Water pledged to improve the city's water services and save Atlanta \$20 million a year.

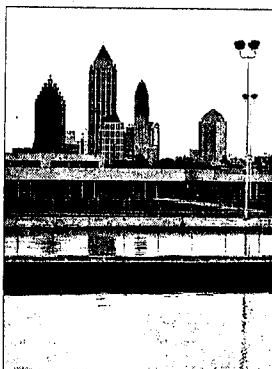
United Water didn't live up to those promises, but the city's claim that privatization wasn't saving any money is laughable. An audit released last week showed United was saving the city \$10 million a year. Unfortunately for United Water, that's half the savings it promised. But in these tough finan-

cial times, when states are releasing prisoners early and raising taxes, saving \$10 million a year on anything is a good start.

That savings ended up in the general fund because the City Council passed legislation in 1998 charging the water system a \$9.8 million yearly franchise fee.

The sewer system, which was supposed to have benefited from the savings, never received any money.

Is United Water to blame for the city's poor fiscal management? No. And now with the water operations back in its grasp, Atlanta won't have those millions to move around or "subsidize" programs, which probably translates into even more new fees or taxes to pay for whatever programs the city was shifting that



BITA HONARVAR / Staff

United Water was completing more repairs of Atlanta's water system than the city's municipal operations had accomplished.

money to.

As for performance, United's service was far from perfect (nor at the level required in the contract). However, when compared with the city's past performance, United did a serviceable job. It was completing more repairs than the municipal operation ever accomplished.

For example, the contract calls for more than 4,500 fire hydrant repairs annually; United completed about 4,000 a year, which is better than the about 3,000 that municipal operations completed before privatization.

There were definitely problems with the water contract, and there were disputes that needed to be hammered out. Franklin, however, didn't need to throw the water provider out with the bathwater.

The city's waste-water system is still under consent decree and requires millions of dollars of improvements. The many years of poor management and lack of capital funding will soon create additional problems that may be too steep to overcome.

These projects were supposed to receive some funding from the privatization savings — unfortunately, city officials couldn't keep their hands off the money. Ultimately, taxpayers will have to foot the bill to complete these projects with new fees or taxes.

Worse, Atlanta's residents will be relegated to the same expensive, poor-quality service they had with municipal operations. While United Water was far from perfect, the numbers show it outperformed the city.

The day will come, sooner rather than later, when residents will long for the days of United Water.

GEORGIA VOICES

Editorial excerpts from around the state

THE OCILLA STAR

Disclose details of suit settlement

We have trouble understanding the difficulty in letting the people of Irwin County know details of the settlement in the lawsuit filed by Roger and Wanda Sumner against Sheriff Donnie Youghn and two of his officers.

The lawsuit stemmed from a July 2000 incident in which the Sumners' home was illegally entered as lawmen tried to serve a search warrant on a nearby house.

This issue goes to the heart of good and open government.

County officials have responded only by saying they do not have the information and "the insurance company won't give it to us." Why? They are entitled to the information but appear unwilling to take any substantial steps to obtain it. Why?

State and federal law have repeatedly ruled that settlements in suits against public bodies, or officials, cannot be secret.

Our county attorney says: "... a judge has sealed the record..." With all due respect, whose side is the county attorney on?

President has wrong school in cross hairs

If President Bush wanted to attack quotas in college admissions, he should have started with the U.S. Military Academy, which the federal government operates. Unlike the University of Michigan, West Point has an actual numerical goal for the number of black students admitted to its ranks.

And while they don't use numerical targets, the Naval Academy and the Air Force Academy also employ affirmative action policies in their admissions.

So why didn't Bush denounce the service academies instead of going after the University of Michigan, which doesn't use quotas? After all, the president is commander in chief of the armed forces, and the service academies



CYNTHIA TUCKER
cynthiat@ajc.com

fall under his authority.

Could it be that the president knew he would have run into opposition from military officers who defend affirmative action at the service academies?

According to The New York Times, a group of distinguished retired military officers is preparing a legal brief supporting Michigan's affirmative action policies.

The military officers have entered the fray because they understand that an adverse Supreme Court ruling in the Michigan case could also force the service academies to dismantle their affirmative action programs.

The service academies use the same logic to defend their use of affirmative action in admissions that other major colleges and universities use: They want a diverse student body that reflects the nation.

"We like to represent the society we come from," Col. Michael L. Jones, dean of admissions at West Point, told the Times. "We want people to understand the society they will defend."

Each year, West Point aims for a class that is 10 to 12 percent African-American but ends up, despite its affirmative action policies, with only 7 to 9 percent African-American representation, Jones said.

The service academies have an additional reason for supporting diversity in admissions: With enlisted military ranks disproportionately dependent on racial minorities — from an Air Force whose enlisted personnel are 28 percent minority to an Army with 44 percent — an all-white officer corps would hurt morale, military experts say.

Bush and other conservatives often offer the U.S. military forces as an excellent example of integration in America, suggesting that diversity in the officer corps has come about through individual accomplishment alone. But that's just not true. Without affirmative action, the service academies would be quite white.

And Colin Powell would not have had the chance for the advancement that led to his eventual post as secretary of state.

At one point in the late 1970s, Powell had been overlooked for a promotion to brigadier general. Clifford Alexander, then secretary of the Army, held up the promotions list, ordering the General Officer Board to take a second look for black officers who were unfairly passed over.

The second time, the list included Powell's name, as well as other black colonels. Without Alexander's affirmative effort, Powell's career may have been stalled.

Even conservatives don't dare suggest the military is putting unqualified officers of color in command positions; Bush probably didn't intend to open a debate over affirmative action at the service academies. He just wanted to score some cheap and easy political points with his ultraconservative base.

But demagoguery on racial issues can come back to haunt you, as Georgia Gov. Sonny Perdue has discovered. He lambasted the vote that exiled the old state flag with its prominent Confederate battle emblem because he needed the votes of the state's "fergit, hell" crowd.

Now, however, the flag controversy threatens to dog him throughout his term in office.

In similar fashion, the president may find that the debate over affirmative action in college admissions takes him places he didn't intend to go — such as West Point.

Cynthia Tucker is the editorial page editor. Her column appears Wednesdays and Sundays.

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OUR OPINIONS

Bush lays out U.S. agenda packed with challenges

In a strong and somber State of the Union address, President Bush last night laid out an ambitious agenda for the nation that he leads, ranging from reform of basic programs such as Social Security and Medicare to the transformation of our energy future and the creation of a global peace under U.S. leadership.

"This country has many challenges," he told the nation. "We will not deny, we will not ignore, we will not pass along our problems to other Congresses, other presidents and other generations. We will confront them with focus, and clarity and courage."

In many ways, however, the president found himself covering much of the same ground as he did in the same speech a year ago. Today, the threat posed by Iraq, North Korea and Iran — the "axis of evil," as Bush labeled them a year ago — is perhaps more stark than ever.

North Korea has apparently restarted its nuclear weapons program, and U.S. efforts to rally an international coalition to move against Iraq have so far been frustrated.

Today Osama bin Laden, the leader of the al-Qaida movement, remains at large. Even the low-grade war in Afghanistan flared again Tuesday between U.S. and Afghan troops against Taliban rebels.

To his credit, Bush himself had warned the American people a year ago that such problems would not be solved quickly, that there would be no easy answers. He also expressed confidence in 2002 that the nation would not dodge those problems, and he offered similar reassurance last night.

In one important aspect, however, something significant has changed. The worldwide support that the United States enjoyed in the wake of Sept. 11 has largely disappeared. In a similar manner, and for similar reasons, the overwhelming domestic support that Bush enjoyed a year ago has eroded as well.

As a result, the year to come looms as a more important and complex test of the president's leadership skills, both domestic and international, than were those first confusing

and frightening weeks after the attacks in New York, Washington and Pennsylvania.

Part of that change was inevitable. On environmental issues, on economic questions, on social issues such as affirmative action and abortion, strong majorities of Americans disagree with positions taken by the Bush administration. For a while, that difference of opinion was obscured by the bond that developed between Bush and his countrymen in the wake of Sept. 11, as the country rallied to his side.

That bond still exists and remains strong. But inevitably, other concerns have begun to intrude. For example, Bush now proposes to address our economic slowdown with a \$674 billion tax cut, more than half of that amount generated by abolishing the tax on stock dividends. But in polls, a strong majority of Americans express concern that such cuts will produce soaring federal deficits that will have to be repaid by our children.

The president also spoke from the heart, and from personal experience, about the power of faith to address problems such as drug and alcohol abuse. But Americans have long believed that religion is too personal, too intimate, to be funded through tax dollars.

Most deeply, the country remains uneasy about the prospect of launching a pre-emptive and unprovoked war against a much weaker opponent half a world away.

Last night, the president laid a compelling, at times emotional case for Iraq's failure to comply with United Nations resolutions, and for the basic evil that is Saddam Hussein. "America is a strong nation, and honorable in the use of our strength," he noted.

But the American people have yet to be convinced that war on Iraq is consistent with that national mission. In the weeks to come, the president's ability to make that case may decide the fate of his presidency and the direction of our history.

► **EQUAL TIME:** For another perspective on this issue, see the next page, A13

MIKE LUCKOVICH

Mike Luckovich's cartoon appears Tuesday through Friday, and Sunday



READERS RESPOND



Photo illustration

Affirmative action

A bone tossed to the masses

Thomas Sowell's column on affirmative action is an excellent example of a reasoned, logical and honest assessment of our educational system ("Selling points of failed policy are dishonest," @issue, Jan. 21). The problem, however, lies much deeper than our colleges and universities.

Affirmative action is, unfortunately, the symptom and not the disease. The disease begins in pre-k for most of the kids in inner cities and rural America.

The failure of our system to prepare children from poor families is directly attributable to an unwillingness on the part of many of our so-called leaders to expect more of not only the teachers, but also the families of these children and

school administrators.

There is, however, more than one type of affirmative action. The practice of preference to children of alumni, faculty and wealthy sponsors is just as unfair as any use of quotas. Sports programs are another sacred cow.

The practice of affirmative action is simply a bone tossed to the masses in order to keep the money coming in and continue a system that is just as established and pervasive as Jim Crow ever was. If the colleges and universities are so concerned about poor students, why don't they share some of the sports revenues with the mostly black athletes?

HERB GARNER
Powder Springs

Critics show they have short memories

Let's pretend. Let's pretend color wasn't an issue when black people could not attend state schools but were taxed to support those schools. Let's pretend color wasn't an issue when German prisoners of war sat laughing as the soldiers guarding them were excluded from the table while those prisoners ate in this country. Let's pretend that in this city there was no Magnolia Room at Rich's downtown where people were excluded based on their color.

Let's pretend there wasn't a place called "Funtown" here, where kids rode the roller coaster and carousel all day long — unless they were colored. Let's pretend those kids didn't cry. Let's pretend we don't choke on the last words in the Pledge of Allegiance and that we didn't teach those same kids the words "with liberty and justice for all." Let's pretend there weren't hundreds of years of "negative action" and there is no need for affirmative action.

J.W. WOOD
Atlanta

Antiwar speech

Responses to "Lawmaker's antiwar speech spurs vocal, silent opposition," Metro, Jan. 28

Dissent helped build America

Congratulations to Rep. Bob Holmes (D-Atlanta) for having the courage to stand up and speak out against America's schoolyard bully, George W. Bush.

The people who walked out should be sent back to school to study the Constitution of the United States as well as U.S. history. This country was built on dissent. The only traitors in this country are those who would try to stifle dissent. Shame on Rep. Gerald Green (D-Cuthbert) for walking out and on [House Republican leader] Lynn Westmoreland, who said it was improper to criticize Bush.

MAGGIE RICHARDS
Pensacola, Fla.

Ride herd on ethics improvements

With integrity in government a legislative priority for Georgia's highest-ranking Republican and Democrat, partisan bickering ought not to be the hill that ethics reform dies on this year.

But what people say in public and do in private can be two different things, so voters will have to watch the process closely to ensure that promises are kept.

Republican Gov. Sonny Perdue began by strengthening ethics through an executive order governing state employees' activities and by the appointment of an inspector-general. He has sought a much-needed 40 percent budget increase for the State Ethics Commission and proposes refining the commission's duties as they oversee a slew of stronger ethics laws. On Tuesday, the first of his ethics legislation was introduced in the Senate.

Perdue has started small, addressing some recent scandalous legislative transgressions: His bill would no longer allow lawmakers to seek to influence the State Board of Pardons and Paroles on behalf of state prisoners and would outlaw candidate-to-candidate transfers from campaign treasuries, which in essence is a money-laundering system.

It also would prohibit lawmakers from soliciting campaign funds during the legislative session; current law only bars them from receiving funds. Current members of the State Ethics Commission would be forced to step down by July, and commission members would have to recuse themselves from considering cases when they have donated recently to a participant.

The state's highest-ranking Democrat, Lt. Gov. Mark Taylor, prefled the first piece of

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ethics legislation way back in November. Senate Bill 3, the Financial Disclosure Reform Act of 2003, has been assigned to the Senate Ethics Committee, which meets today for the first time. It would increase requirements for financial disclosure by public servants and their close relatives, as well as by lobbyists. It takes a huge, necessary step toward safeguarding the public good by increasing Georgians' awareness of public servants' activities.

Even better, the bill is identical to bipartisan legislation that passed the Senate unanimously last year before disappearing into the black hole of the House Judiciary Committee. Taylor and the sponsor of his bill, Senate Minority Leader Michael Meyer Von Bremen (D-Albany) are urging Perdue to use the bill as a first step for the General Assembly's long-overdue ethics reform.

Perdue, whose ethics package is slowly taking shape, should embrace the Democrats' invitation to expedite his ambitious mission.

The Senate Ethics Committee, chaired by Sen. Mike Crotts (R-Conyers), is loaded with influential legislators whose opinions will carry a lot of weight with their Senate colleagues. A strong, bipartisan consensus on behalf of ethics reform in the Senate would put necessary pressure on the House, which has traditionally been far more reluctant to live by modern expectations of political conduct.

But again, public attention, input and if necessary outrage will be key to forcing the necessary changes. People get the government they deserve and demand; for too long, Georgians have demanded — and received — far too little.

Self-control should be above reproach

Cynthia Tucker's argument ("Birth control the answer to abortion," @issue, Jan. 22) is absolutely misguided. As much as Tucker would like to deny it, when it comes to sex, birth control and abortion, it is impossible to remove the subject of morality from the debate.

"Wacky religious fundamentalism," as Tucker calls it, is not the only ideology that maintains that abstinence until marriage is the best and only foolproof way to avoid unplanned pregnancy.

I would think she would be attacking our hedonistic culture's mantra of "sex without consequences" before she would attack ideologies that teach self-control and personal responsibility.

SHIRSTEN DREYER
Lawrenceville

Air of secrecy casts doubt on claims

The medical malpractice situation could be more easily resolved if insurance companies would open their books and allow the public and the government to verify the "fact" that the current crisis is caused by jury awards and not bad investments and bad management on the part of the insurance industry.

If the insurance industry could prove that the recent spike in malpractice premiums is caused by massive jury awards, the public would accept some sort of medical malpractice "reform." As it stands, the insurance companies' anti-trust exemption lets insurance companies make unverifiable statements about the "cause" of the premium hikes.

FRANK GANNON
Demorest



Holmes

Foreign policy not a state issue

Would somebody please tell Rep. Bob Holmes and his fellow state legislators that the General Assembly does not conduct U.S. foreign policy? Don't they have enough state and local issues to discuss without wasting time debating the pros and cons of going to war with Iraq?

BOB SWYGERT
Stockbridge

U.S. pilots don't deserve penalty

As a member of the Royal Canadian Air Force during World War II, I am appalled that two U.S. F-16 pilots are facing criminal prosecution for a friendly fire accident.

Today's pilots are trained to make split-second, life-or-death decisions and do so to the best of their ability. As stated, "the pilots pulled the trigger, but there's plenty of blame to go around."

These men should not be court-martialed and face incarceration for the rest of their lives to appease the government of Canada.

LIONEL STUTZ
Canton

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ON AJC.COM

"The Republican Party of Secretary of State Colin Powell has every reason to hope that the black face of the Democrats will be Al Sharpton."

Providence columnist Philip Terzian on Sharpton's presidential candidacy.

3 PAGES DAILY OF DEBATE AND DISCUSSION

Page one

New Hampshire's troubles make the state a good spot for Democrats to begin the 2004 campaign.

Page two

Editorial: With war against Iraq looming and the economy in dire straits, President Bush faces tougher challenges.

Page three

Mayor Shirley Franklin and Atlanta taxpayers will regret the decision to terminate United Water's contract.

OUR WEEKLY COLUMNIST LINEUP:

- **Sunday:** Thomas Friedman, George Will
- **Monday:** Molly Ivins, William Safire
- **Wednesday:** Thomas Friedman, Leonard Pitts
- **Thursday:** William Safire
- **Friday:** Bill O'Reilly

'Deal' might mean victory without war

Memo to: President Bush
From: A pro-American Arab leader

Dear Mr. President, I and my colleagues from the Arab world and Turkey share your view that Saddam Hussein is lying, has not complied with the United Nations and must go. But is an American invasion the only way to remove him? Would you consider a deal for his exile?

I ask because we have been getting mixed signals. Your defense secretary seemed to endorse the idea, but others suggest to us that we shouldn't even bother. I admit, we and the Turks have not exactly been profiles in courage. The meeting that our foreign ministers held in Istanbul last week was a PR event staged by the Turks to show their public that they

were looking for some alternative to war.

Let me explain why. First, we're all uneasy about appearing to our publics as an extension of your military policy. Saddam is not popular in our region, Mr. President, but you are even less popular. Second, each of us is looking to the other guy to present the deal to Saddam, but none of us wants to be the one to do it for fear of being rebuffed. But the most important reason is that we have nothing concrete to offer. We need a hard offer, and neither we nor you are putting that together.

So, Mr. President, I am proposing that you give me a letter on your stationery authorizing a joint mission from the Arab League and the

Islamic Conference to offer Saddam the following:

1. A U.S. commitment not to interfere with safe passage out of Iraq for Saddam and his whole entourage. (I assume they will want to go somewhere in the former Soviet Union.)
2. We understand that as a legal matter, the United States could never and would never forswear the right to hunt or prosecute Saddam for war crimes. But we need a public commitment from you that America's "priority" once Saddam leaves Iraq would be to focus on the rebuilding of that country and not on hunting Saddam or any Iraqis who were once part of his regime. This last point is critical, because Iraqi army officers who want to stay behind — and whose help you will need in holding Iraq together — have to know that they will not be prosecuted. If they know that, there is a much better chance they will pressure Saddam to go and cooperate with you later.
3. A commitment by you to give whichever Iraqi general succeeds Saddam a chance to work with you and the United Nations to complete the disarmament in good faith and begin political liberalization — before you opt for any military action. Iraq is a highly tribalized society, Mr. President, and it can be held together for now only by the Iraqi army. We know, though, there are Iraqi generals eager to put Iraq onto a more normal path. It is true that if you occupied Iraq, you could have more control over its transformation. You also could find yourself in a hornet's nest.

This proposal has several virtues: By engineering Saddam's exile we make the moral, legal and strategic point that no one can get away with defying the United Nations and flouting international norms forever. But we do it in a way that avoids a U.S. occupation of Iraq, with all the risks and dangers that could entail. It

will be a big political win for you: Your tough line will have been vindicated, your public will be enormously relieved, uncertainty will be removed from your markets, and the image of the U.S. bully will be softened.

The chances are very slim that we could persuade Saddam to accept such a deal. But we will know only if you keep your gun loaded and pointed right at his head — and if you accompany that with a firm offer. And the mere fact of your and our offering such a deal will strengthen your hand, by demonstrating to the world that we are going the extra-extra mile to avoid a war. But we need a firm offer from you. Without it, Saddam's argument that America will not be satisfied with anything but war will stand. Mr. President, it would be a travesty if we all wanted an alternative to war for removing Saddam, but couldn't overcome our respective inhibitions to give it one real honest try.



THOMAS FRIEDMAN

is a New York Times columnist. His column appears Sundays and Wednesdays.

Gene shopping: Too close for comfort

"Only the desirable embryos are implanted, and troublesome Billy is never born."

I extracted this line from a story in USA Today about our future, if we choose to accept it, as boutique parents. That is, moms — and dads, if males are still allowed passage through the birth canal — having the technological wherewithal to select desirable characteristics for their designer children.

That day is not far off, according to scientists at a recent UCLA genome conference. Estimates are that gene shopping could be available in 10 years.

Meanwhile, fertility clinics already screen for genetic abnormalities, tossing thousands of unhealthy embryos every year.

Nature takes care of abnormal or unhealthy embryos, too. It's called a miscarriage.

So far, nature doesn't screen for personalities and behaviors, hence "The Jerry Springer Show." My recoil reflexes relax just a tad when I consider that Springer's show might be rendered mute were genes more carefully selected. But then we are still talking about self-selected screening, and it's unlikely that Springer's guests would see any reason to deprive the world of their genes.

Moreover, given the expense of genet-

ically advanced testing on top of the costly in vitro fertilization requisite to such screening, those who would benefit most from genetic fine-tuning probably won't be on the short list of candidates.

Then again, some of us remember when the notion of affordable computers in every home was implausible, a remote fantasy unlikely to be realized until some wildly future date.

The brightest point in the USA Today article was a Pew Charitable Trusts poll that found 70 percent of Americans disapprove of using technology to select traits. Two-thirds of the 1,211 surveyed said it was fine to use the same technology to screen for disease. Reassuring. But human curiosity and technological access have a way of altering good intentions.

Pop poll: Raise your hand if you've never clicked on a porn link. Thank you, Madam, you can put your hand down.

I proffer this unpalatable example because it makes the point. People who would never buy a porn magazine or rent an X-rated movie or visit a purple palace on the interstate nevertheless might point their mouse and click because . . . human curiosity and technological access make "it" — whatever "it" is — compelling and easy.

Similarly, how many people can resist the temptation to know the sex of their unborn child? Some prefer the mystery

but the human urge to know goes way, way back. It's an old, old story.

It is therefore unlikely that future parents will long resist the temptation to know the proclivities of their reproductive product and to exercise the option of nudging their little preborn darlings in the behavioral department. The same survival impulse that makes us want a better life for our children will drive the narcissistic urge to improve on nature's sometimes lackluster performance.

Which brings me back to "troublesome Billy." We're already culturally repelled by the troublesome Billys among us, such that boys are routinely medicated and or punished for what used to be acknowledged as normal boy behavior.

When Billy draws a picture of a gun, he's diagnosed as precriminal and dosed to achieve a higher order of being, i.e. feminine complacency. When Billy pulls Susie's pigtail, a clear precursor to date rape, he's sent for sexual harassment reprogramming. And so it goes until Billy is genetically programmed out of the program.

Never mind that troublesome sorts are usually my personal favorites. We should be mindful that in routing out the troublesome Billy gene we might prevent Timothy McVeigh or Ted Kaczynski, but we might also preclude an Einstein or a Martin Luther King. We can never *really* know, which remains the moral to that old, old story.

Leonard Pitts' column will resume soon.



KATHLEEN PARKER

is a columnist for the Orlando Sentinel. Her column appears occasionally.

TODAY'S CARTOONS

BOB GORRELL / Creators Syndicate



"EVER TRY WALKING UP THE DOWN ESCALATOR?"

JEFF KOTERBA / North America Syndicate



"I DUNNO... MUST BE SOME NEW REALITY SHOW."

Looking to 2004, Democrats find fertile ground in New Hampshire

Concord, N.H. — Exactly a year before the New Hampshire primary of 2004, the big sign on the steps of the state Capitol reads: CAUTION: FALLING ICE.

That is the warning signal that greeted the three Democratic presidential hopefuls who were in town last week, getting in their early licks for the contest next Jan. 27. And it is the symbolic message to President Bush, who eked out a narrow 7,211-vote victory over Al Gore in November 2000, after being drubbed by Sen. John McCain in the Republican primary.

These last two years have not been good for residents of the Granite State. The mood here is, in some respects, as chilling as the weather that confronted Howard Dean, Joe Lieberman and Dick Gephardt as they made the rounds of Democratic activists.

"People are worried," said state Senate Minority Leader Sylvia Larsen, a supporter of Massachusetts Sen. John Kerry. "They have hunkered down for a long winter,

and they're not sure what will come after that."

Peter Spaulding, a Republican member of the Governor's Council and a key McCain supporter in 2000, said, "It's more cautious than optimistic. There've been enough layoffs that people are worried about their jobs. And everyone has seen his 401(k) plan shrink."



DAVID BRODER
is a Washington Post columnist. His column appears occasionally.

By many measures, New Hampshire's economy is doing better than the nation's. It is in stronger shape than its New England neighbors. And the budget gap facing newly elected Republican Gov. Craig Benson and the Republican Legislature — about \$250 million

— is not nearly as large as that of many other states.

Nonetheless, the atmosphere in this state — which has exaggerated importance because of its place in the front of the primary calendar — is more reminiscent of 1992, when Bush's father was running for a second term, than of 1996 or 2000, when high-tech and Internet companies were expanding and the economic picture was bright.

Unlike his father, who was embarrassed and weakened in 1992 by Pat Buchanan's successful appeals to discontented Republican and independent voters, this President Bush faces no opposition in the primary. But New Hampshire's economic nervousness is a signal to him of a problem he has to solve, not just here but across the country.

The mid-January Washington Post-ABC News poll found 53 percent of those interviewed disapprove of Bush's handling of the economy and only 43 percent approve. That is his worst rating in 21 repetitions of that question, dating back to March 2001. And it is the first time in all those surveys that negative judgments predominated.

Other parts of that poll suggest that the campaigning Democrats have fertile ground on which to work. More of those polled oppose than support Bush's proposed elimination of taxes on corporate dividends, and by large margins they say they would prefer to see the sums Bush would use for tax cuts go into domestic programs or be used to reduce the budget deficit. By more than 2 to 1, they say that Bush's tax package favors the rich over the middle class or all



Associated Press

Sen. Joe Lieberman (D-Conn.), a Democratic presidential hopeful, greets a well-wisher in Manchester, N.H.

people equally.

All those negative judgments might change if there were to be a strong recovery. But at least in New Hampshire, that does not appear to be in prospect. "The New Hampshire outlook is better than Massachusetts or other surrounding states," said Brett St. Clair, spokesman for the New Hampshire Business and Indus-

try Association, "but we expect very slow growth in the next couple years. There is no magic bullet."

The latest official numbers from the New Hampshire Employment Security division show unemployment climbing from 4 percent to 4.7 percent in the past year.

Ross Gittell, a University of New Hampshire economist who keeps close tabs on state trends, said, "New Hampshire really rode the high-tech boom of the 1990s. Our per-capita income rose from 25th among the states to sixth. So this is a big change for us, with lots of employment being lost to China and other low-cost areas. We have had a significant decline in manufacturing, and these low-skilled people are having a hard time being re-employed. Those who find jobs are often taking lower pay . . . and prospects don't look too good for the short term or the medium term."

When Karl Rove comes to St. Anselm College for a scheduled visit in March, he will be reminded that without New Hampshire's four electoral votes, George W. Bush would not be president. And in 1992, in a soft economy, Bush's father lost New Hampshire to Bill Clinton.

CERTIFICATE OF SERVICE

I, Sherene F. McDougall, hereby certify that a copy of the foregoing “Reply Comments of Cox Enterprises, Inc.,” was sent via hand-delivery and/or email as shown to the following:

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